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JUSTICE of the PEACE,

AND

PARISH OFFICER.

By RICHARD BURN, L.L.D.

One of his Majesty's Justices of the Peace for the County of Westmorland.

The TENTH EDITION.

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Excise and Customs.

S the customs and excise, so far as justices of the peace, constables and other peace officers, are concerned therein, are in some measure connected and interwoven with each other; it is thought proper here to represent them together, that the reader may at once have a full and distinct comprehension of the whole.

- I. Of the customs in general.
- II. Of the excise in general.
- III. Of the feveral goods in particular, under the management of the commissioners of the customs and excise.

I. Of the customs in general.

Note; There are two books of rates for ascertaining the values of goods on importation, according to which the customs shall be paid; the one signed by Sir Harbottle Grimston, baronet, speaker of the house of commons, referred to, established, and confirmed by the act of tonnage and poundage 12 C. 2. c. 4. The other, figned by Spencer, Compton, esquire, speaker of the house of commons, being an additional book of rates of goods imported, not particularly specified in the former book of rates: The latter of which, as being part of the act itself, is inserted in the statutes at large, 11 G. c. 7. but the former, altho' it is as necessary to be known, yet being no part of the act, is not inserted therein; but may be found in Mr. Cay's abridgment.

1. When any commission shall be issued for constitu- Appointing and ting commissioners of the customs, two of them first na- iwearing commed in the commission shall be sworn before the chancel-missioners lor, or chief baron of the exchequer, or mafter of the rolls, for the true and faithful execution, to the best of their knowledge and power, of the trust committed to their charge and inspection, and that they will not take or receive any re-

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ward or gratuity, directly or indirectly, other than their falaries, and what shall be allowed them from the crown, or the regular fees established by law, for any service to be done, in the execution of their employment in the customs, on any account whatsoever.

6 W. c. 1. f. 5.

And every other of the commissioners and patent officers, and every of their deputies, clerks, or servants, and all other officers who shall have any employment in or about the customs, shall at their admission, if it is within the ports of London, take the said oath before two commissioners; and elsewhere, before two justices of the peace in the county, town, or place, where his employment shall be: And every person not taking such oath, shall forseit his office. id.

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And the persons hereby respectively authorized to administer the oath, shall certify the taking thereof, to the next sessions to be held for the county or place where the oath was administred, to be kept amongst the records.

id. f. 6.

In what cases they only can make seizures. 2. By the 13 & 14 C. 2. c. 11. No ship or goods shall be seized as forseited for unlawful importation or exportation, or non-payment of customs, but by officers of the

customs. f. 15.

But by the 8 G. c. 18. Spirituous liquors, British or foreign, and all foreign exciseable liquors forseited, together with the casks or other package, may be seized by any officer of the customs or excise, or by such persons as shall be deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, but by no other person. s. 24.

And by the 33 G. 2. c. 9. Officers of excise, as well as those of the customs, may seize all ships, vessels, boats, wherries, pinnaces, barges, or gallies, liable to be forseited for any of the reasons contained in any of the acts of 8 G. c. 18. 11 G. c. 30. 12 G. c. 28. hereaster following, and proceed to condemn the same as the officers of the

customs may do. f. 24.

And the like power is given in other instances, by special acts; as is set forth under the several heads hereafter

following respectively.

Shipping or landing goods without warrant.

3. If any goods shall be laden or taken in from the shoar, into any barge, hoy, wherry, or boat, to be carried aboard any ship outward bound; or laden or taken in out of any ship coming in from foreign parts, without a warrant and presence of an officer of the customs; such barge, hoy, wherry, or boat shall be forseited; and the warsinger offending

offending shall forfeit 1001. and the master, purser, boatfwain, or other mariner of any ship inward bound, confenting thereunto, shall forfeit the value of the goods so unshipped; half to the king, and half to him that shall sue.

13 & 14 C. 2. c. 11. /. 7.

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And if any carman, porter, waterman, or other person, shall assist in the taking up, landing, shipping off, or carrying away, any fuch goods; fuch person, being apprehended by the warrant of any justice of the peace, and the same being proved by the oath of two witnesses, the said offender for the first offence shall by the justice be committed to the next gaol, there to remain till he find furety of the good behaviour for fo long time until he be discharged by the lord treasurer, chancellor, under treasurer, or barons of the exchequer; and for a fecond offence, he may by any justice of the peace as aforesaid, be committed to the next gaol, there to remain for two months without bail, or until he shall pay to the sheriff 51. for the king's use, or until he shall be discharged by the court of exchequer as aforesaid. id.

4. And here, on occasion of the forfeiture of the boat Power of justices or veffel, mentioned in the preceding fection, it is proper cattle and carrito take notice of a general clause in the statute of 8 G, ages forfeited.

c. 18. which brings the cognizance not only of the faid forfeiture, but also of several others hereafter following, under the jurisdiction of the justices of the peace; and confequently enlarges confiderably this title relating to the customs; to wit, In regard that the keeping and maintaining the horses seized, from the time of seizure, to the time of condemnation in the court of exchequer, is very chargeable, and the charge of condemning such veffels, boats, and horses, is very great; therefore it is enacted, that all feizures of veffels or boats of 15 tons or under, by virtue of any act relating to the customs, for carrying uncustomed or prohibited goods, or for relanding debenture goods; and all feizures of horses, or other cattle, or carriages for carrying fuch goods, may be heard and determined in fuch manner as is appointed by the act of 6 G. c. 21. except as therein excepted; that is to fay, All fuch feizures may in a fummary way be determined by two justices of the peace residing near the place where the feizure is made; who shall summon the party accused, and on appearance or default proceed to hear and give judgment, and iffue warrants for fale of fuch as shall be by them condemned: whose judgment shall not be liable to any appeal or certiorari. 8 G. c. 18. f. 16.

5. And

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Justices on trial to proceed on the merits.

Officer on trial need not prove his commission.

5. And by the 9 G. 2. c. 35. In trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. \int . 34.

6. And if any question shall arise, whether any person be an officer of the customs, proof shall be admitted, that such person was reputed to be, and had acted in such office, and at the time when the matter in controversy was done, without proving or producing the commission.

Proof to lie on the owner. 7. And if any dispute shall arise, whether the customs have been paid; the proof shall lie on the owner, and not on the officer. 12 G. c. 28. s. 8.

Goods relanded after drawback.

8. If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debenture to be made forth for any fuch drawback, shall not be really and bona fide shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of diffress to save the goods from perishing, which shall presently be made known to the principal officer of the port; then not only all fuch certificate goods shall be forfeited, but also the person relanding the same, or concerned therein, or to whose hands they shall knowingly come, or by whose privity they are relanded, shall forfeit double value of the drawback, together with the vessels, boats, horses, cattle, and carriages, made use of in landing or carrying the same; half to the king, and half to him that shall inform, seize, or sue in the courts at Westminster. An. c. c. 13. f. 16. But by the clause abovementioned, the boats, cattle, and carriages, may be recovered before the justices of the peace.

Unshipping with intent to land.

9. By the 8 An. c. 7. If any goods shall be unshipped, with intention to be landed, without paying customs, or if any prohibited goods shall be imported; then not only the said goods shall be forfeited, but also the persons assisting or concerned therein, or to whose hands they shall come, shall forfeit treble value, together with the vessels, boats, horses, and other cattle, and carriages; half to the king, and half to him that shall seize or sue. s. 17.

Power to fearch.

the interval of the exchequer, may take a conflable or other publick officer near, and in the day time enter any house or place, and in case of resistance break open doors, chests, and other package, there to seize, and from thence to bring goods prohibited and uncustomed, and secure them in the king's warehouse. 13 & 14 C. 2. c. 11. s. 5.

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11. If prohibited or customable goods shall be found by Goods passing any officer of the customs, in a bark, hoy, lighter, barge, may be stoppe boat, or wherry on the water; or coming directly from the water fide, without the presence of an officer, or if fuch goods shall, on information of a credible person, be found in any house or place, on search made as by the said statute of 13 & 14 C. 2. c. 11. such officer may stop and put the faid goods in the king's warehouse, until the claimer shall make proof before the commissioners, if it be in the port of London, that the duties have been paid or fecured, or that the fame had been bought in a lawful way of trade, and that fuch person verily believes the duties to have been paid, or that the faid goods had been compounded for, or condemned in the exchequer, or been otherwise delivered by writ of that court, and that the prohibited goods had been compounded for, or condemned, or otherwise delivered, as aforefaid; in which case, the goods shall be delivered without delay or charge. And if the goods be stopped in any other port, the claimer shall make the like proof and deliver the same to the collector, or in his absence to one of the other principal officers of the port, which proof shall forthwith be transmitted to the commissioners for their directions touching the delivery of the goods, or for feizing the same and prosecution. 6 G. c. 21. s. 39.

Provided fuch proof be made within ten days; in failure whereof the goods may be feized and profecuted as by the laws against the importation of prohibited or uncustomed

goods. /. 40.

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If on fuch profecution, where no application hath been made to the commissioners or officers aforesaid, and not otherwise, the property of the goods shall be claimed, and the question shall arise whether the duties were paid, or the goods had been compounded for, or condemned, or otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recovers his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. J. 41.

Where the claimer shall make proof, either by oath before a justice of the peace, or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner shall receive any damage by such stop; he may bring

his action for his reasonable damages. J. 42.

But the officer, if he pleases, may prosecute, notwithstanding the directions of the commissioners; in which case

Excise and customs.

he shall be liable to be fued by the owner for recovery of his goods with full costs: or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages. f. 43.

Goods taken in

12. If any foreign goods shall be taken in at sea, or put out of any ship within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a lawful reason, of which the mafter shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive); the same shall be forfeited, and every person aiding or concerned therein shall forfeit treble value; and the vessel into which the same shall be taken, shall be forfeited, not exceeding 100 tons; and the mafter of the veffel out of which they are taken, shall also forfeit treble value; half to the king, and half to him that shall seize or sue. 9 G. 2. c. 35. J. 23.

Veffel hovering near the coaft.

13. Where any vessel, coming from foreign parts, having on board any goods liable to forfeiture by any act now in force on being imported, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and diffress of weather, of which the mafter or other person having charge of the vessel shall give notice and make proof before the collector or other chief officer of the customs, immediately after the arrival of the vessel in such port: all such goods, together with the chefts, boxes, casks, and other package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the veffel also, with her tackle and furniture, shall be forfeited, provided such vessel doth not exceed the burden of 50 tons; half the produce, after the fale thereof, (charges deducted,) to be to the king, and half to the officer who shall make the seizure. 5 G. 3. c. 43. J. 38.

fearch coafting

14. Any officer of the cuftoms or excise (producing his warrant or deputation, if required) may go on board any coafting veffel, and fearch for prohibited and uncustomed goods, and continue on board during the veffel's flay within the limits of the port; and if any person shall obstruct him, he shall forfeit 100 l. 9 G. 2. c. 35. f. 29.

Persons lurking 15. On oath made before a justice of the peace, that any within five miles person is lurking within five miles of the sea coast or any navigable river, and there is reason to suspect that he waits

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T 1 with intent to be aiding in running of goods, the juffice may grant his warrant to bring him before him; and if he shall not give a fatisfactory account of himself and his employment, or otherwise make it appear that he is not concerned in any clandestine or unlawful business, he shall be committed to the house of correction, to be whipt and kept to hard labour not exceeding one month: And the commissioners of the customs or excise shall cause to be paid to the informer a reward of 20s. for each offender. 9 G. 2. c. 35. f. 18.

But if such person shall defire time for clearing himself, he shall not be punished by whipping or other correction, but committed to the common gaol till he shall so do, or till he find fecurity not to be guilty of any the faid offences.

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16. If any person shall knowingly receive or buy any Buying receirun goods; he shall on conviction (after summons) by ving run goods. confession, or oath of one witness, before one justice where the offence shall be committed or the offender shall be found, forfeit 201. half to the informer, and half to the poor, by diffress; for want of diffress, to be committed to prison for three months. 8 G. c. 18. s. 10.

17. And by the 11 G. c. 30. If any person shall harbour, Concealing run keep, or conceal, or fuffer to be harboured, kept, or con-goods. cealed, any prohibited or run goods liable to pay customs; he shall (whether he claim any property in them or not) forfeit the same, and treble value, to be recovered and mitigated as by the laws of excise, or in the courts at Westminster, half to the king, and half to him that shall

fue. J. 16.

18. And if any person shall offer to sale any prohibited Offering to sale goods, or which have been, or are by him pretended to run goods, have been run; the fame, together with the package shall be forfeited, and be feized by the party to whom they are offered to fale, or by any officer of the customs or excise. Provided that if the feizure is within the bills of mortality, then within 24 hours, if elsewhere within 48 hours, they be put into the king's warehouse near the place of seizure, and if it be far from any fuch warehouse, then in some excise office near. 11 G. c. 30. s. 18.

And the person offering them to sale, shall also forseit

treble value. f. 19.

And the faid goods, if fold, may be feized (with the package) from the buyer, either by the feller or any fuch officer. 1. 20.

Excise and customs.

And the buyer shall also forfeit treble value. But both buyer and feller shall not be profecuted for the same goods, but whether of them shall first prosecute the other shall be discharged; but if prosecution shall not be commenced in a month, the warehouse keeper may prosecute. s. 21.

Which faid forfeitures shall be recovered and mitigated as by the laws of excise, or in the courts at Westminster; half to the king, and half to him that shall sue. f. 39.

Porter carrying gun goods.

Perfons armed

19. All porters, and others, knowingly carrying run or prohibited goods, and who shall be convicted thereof (on appearance or default) on the oath of one witness, or confession, before one justice where the offence shall be committed, or the offender found, shall forfeit treble value, half to the informer, and half to the poor, to be levied by diffress by warrant of such justice, and for want of diffress to be committed to the house of correction, to be whipt and kept to hard labour not exceeding three months. 9 G. 2. c. 35. f. 21.

20. Persons passing with foreign goods landed without or disguised car- entry, within 20 miles of the coast, if they be more than rying run goods. five in number, or armed, or difguised, or who shall forcibly refift the officers of the customs or excise in seizing run goods, shall be guilty of felony, and transported for

feven years. 8 G. c. 18. f. 6.

But if any offender shall in two months after his offence, and before conviction, discover his accomplices, so as two or more be convicted; he shall have a reward of 40 l. if the value of the run goods exceed 50 l. and shall be acquitted. J. 7.

And any other person discovering any one offender, in three months, so as he be convicted, shall have in like manner 40 l. over and above what he may be intitled to on

account of the faid run goods. f. 8.

And by the 9 G. 2. c. 35. Persons being two or more in company, who shall be found passing within five miles from the coast, or from any navigable river, with one or more horses, or with any cart or carriage, whereon there shall be laden more than fix pounds of tea, or spirituous liquors exceeding five gallons, not having paid the duties, and not having a permit, or any other foreign goods of above 30 l. value, landed without entry and payment of duties, and shall carry any offensive arms, or wear any disguise, or shall forcibly obstruct, or refist any officer of the customs or excife in feizing or fecuring any prohibited, uncustomed, or run goods, or other execution of their office, shall be deemed runners of foreign goods, within the meaning of the laid

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act of 8 G. c. 18. altho' no proof shall be made that such goods were run, or had not been entred and paid duty; but the proof of fuch entry and payment, and how they came by the goods, shall lie on such persons: and every person convicted of any such offence, shall be guilty of felony, and transported for seven years. f. 13.

And all the goods fo found, weapons, horses, cattle, carriages, and their furniture, chefts, bags, casks, and

other package shall be forfeited.

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And if any officer or other person shall lose any limb, or be otherwise maimed or dangerously wounded by any offender last mentioned, or in endeavouring to apprehend him, he shall on the conviction of such offender have a reward of 50 l. over and above any other reward he may be intitled to by this act. 1. 15.

And if any person be killed in endeavouring to apprehend fuch offender, his executors or administrators (on certificate under hand and feal of the judge of affize for the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have 50 l. over and above any other reward they may be intitled to by this act. 1. 15.

And if any person shall, in three months after such last mentioned offence committed, discover to the commisfioners of the customs or excise, any offender so as he be convicted; he shall have 501. over and above any other reward he may be intitled to by any law. f. 16.

And the commissioners of the customs or excise shall cause the rewards to be paid out of the said revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing such certificate of the person being killed: and if any dispute shall arise between the persons intitled to the reward, the same shall be

adjusted by the commissioners. J. 17.

21. And upon information on oath before a justice of Apprehending the peace, that any persons, to the number of three or riotous smugmore, are or have been affembled, to be aiding in the clandestine running, landing, or carrying away prohibited and uncustomed goods, or to rescue them after seizure, and armed with fire arms or other offensive weapons; he shall grant his warrant to the constables and other peace officers, requiring them to take to their affiftance as many as may be thought necessary for apprehending such persons: and he may, if on examination he find cause, commit them to the next county gaol, there to remain without bail or mainprize, until they be discharged by due course of law:

and fuch persons, on conviction of their being affembled and armed as aforesaid, shall be adjudged guilty of felony, and transported for seven years. 9 G. 2. c. 35. s. 10.

And the apprehender for every person convicted shall have a reward of 501. immediately after conviction and demand made, tendring a certificate under the hand of the judge, certifying the conviction, and that he was taken by the person claiming the reward. f. 11.

And if any person shall lose a limb, be maimed or dangerously wounded, in apprehending or endeavouring to apprehend, or pursuing such offender; he shall on such conviction have a reward of 50 l. over and above any other reward that he shall be intitled to by this act. f. 11.

And if any person shall be killed in taking, or endeavouring to take such offender; his executors or administrators (on certificate under the hand and seal of the judge of affize of the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have a reward of 50 l. over and above any other reward they may be intitled to by this act. s. 11.

And if any offender shall in three months after his offence, and before his conviction, discover two or more accomplices, to the commissioners of the customs or excise, so as two be convicted; he shall have 50 l. for every perfon so convicted, and be discharged of his offence. f. 12.

The faid rewards to be paid as in the last section.

Outlawed fmugglers.

22. By the 19 G. 2. c. 34. If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall be assembled in order to assist in the exportation of goods prohibited to be exported, or in running any prohibited or uncustomed goods, or goods liable to pay duties which have not been paid, or in relanding goods after drawback, or in rescuing the same after feizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or affault any officer in the feizing fuch goods, or dangeroully wound any officer attempting to go on board any vessel, or shoot at or wound him when on board; he shall be guilty of felony without benefit of clergy. f. 1.

And persons charged with any the said offences, before a justice of the peace, by information on oath of one or more credible persons to be subscribed by him or them, the justice shall forthwith certify the same under his hand and

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feal, and return the information to one of the fecretaries of state, who shall lay the same before the king in council; who may thereon make his order, commanding the offender to furrender in 40 days after the first publication thereof in the gazette, to the lord chief justice, or any other of the justices of the king's bench, or to some justice of the peace who thereon shall commit him to gaol, to answer the charge against him according to due course of law: Which order the clerks of the privy council shall cause to be forthwith published in the two successive gazettes, and to be transmitted to the sheriff where the offence was committed; who shall in 14 days cause the same to be proclaimed between ten in the morning and two in the afternoon, in the market places, on the market days of two market towns in the same county, near the place where the offence was committed; and a copy of the order shall be affixed on some publick place in the said towns: And if such offender shall not surrender pursuant to fuch order, or escape after furrender, he shall be attainted of felony without benefit of clergy. f. 2.

And if any person after the time appointed for furrender, shall knowingly harbour such offender; he shall, on conviction within one year, be guilty of felony, and trans-

ported for seven years. s. 3.

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And every person who shall take, or discover so that he may be taken, any person so advertised and not surrendring, and cause him to be brought before a judge of the king's bench, or justice of the peace for London or Middlesex (who shall commit him to Newgate), shall receive 5001. in one month after execution awarded, from the commissioners of the customs or excise respectively: And if an offender, against whom no such order in council shall have been made, shall himself so discover or apprehend any other against whom an order hath been made; he shall be acquitted of all his own offences for which no profecution is then commenced, and shall also have his share of the præmium: And if any person shall be maimed or grievously wounded in apprehending such offender; he shall receive 50 l. over and above such other reward as he may have as apprehender: And if any person shall be killed in apprehending, his executors or administrators shall J. 10. receive 1001.

But nothing herein shall prevent ministers of justice from taking such offender by the ordinary course of law; but if he shall be taken before the expiration of the time limited for his surrender, no surther proceedings shall be

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had upon the order made in council, but the offender shall

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be brought to trial by due course of law. f. 4.

And if any offender, before order for his surrender, shall discover two or more accomplices, so as they be convicted; he shall receive 501. for each, and be discharged of all offences for which no prosecution shall be then com-

menced. f. 11.

In the case of John Harvey, E. 20 G. 2. The attorney general, suggesting the several particulars to have been complied with as in this act specified, prayed that execution might be awarded according to the faid act. The defendant traversed all the facts contained in the suggestion. On which, at another day, the attorney general went into the proof of the feveral iffues. - The feveral facts touching the laying the information before the juffice (Mr Burdus) against the prisoner and others; his certifying it in due manner to the duke of Newcastle, secretary of state; the duke's laying it before the king in council; the order of council (which was produced under the feal of the council) requiring the prisoner and others to surrender within 40 days after publication in the London gazette; the transmitting this order to the printer of the gazette; the publication of it in due time in two fuccessive gazettes; and the transmitting it to the sheriff of the county of Suffolk, in order to its being proclaimed and published as the act directeth, -were well proved. Then the under-sheriff of Suffolk and other witnesses were called, to prove the proclaiming and fixing up the order in two market towns near Beauacre, the place where the fact is charged in the information taken by Mr. Burdus to have been committed. And it appeared on their evidence, that it was proclaimed and fixed up at Ipswich, which is 30 miles from Beauacre; at Hadly, wich is 42 miles from Beauacre; and at Leoftoff, which is 5 miles from Beauacre; and at no other places: and that there are five or fix market towns nearer to Beauacre than Ipfwich; particularly Southwold 5, and Beacles 8 miles .- Mr. Ford, affigned counsel for the prisoner, infisted that the act had not been complied with. The act indeed doth not fay that it shall be in the next market towns, but still it must be in the market towns near the place. the distance of 30 miles cannot with any propriety be called near, when it appeareth that there are at least three market towns within a third part of that distance. And of this opinion was the court. This, they faid, is a very penal law. And it would be of dangerous confequence quence to give the sheriff a greater latitude, than the legiflature intended to give him. Some latitude it did intend to give, and therefore did not confine him to the next market towns, because that would have rendred the execution of the act difficult, and subject to great niceties. But the law did not intend to leave the matter wholly to the discretion of the sheriff, and therefore it requireth that it be done in the market towns near the place. word is plainly restrictive of the sheriff's power. It is a guide to his discretion in the execution of the act. And what doth it mean? Not furely the most remote town; nor doth it mean a town comparatively remote, as, it is plain from the evidence, Hadly and Ipswich are. — On the whole; the court, without fumming up the evidence, directed the jury to find for the king, on all the iffues, except those which regarded the proclamations in the market towns near Beauacre; and on those to find for the prisoner, which they did. And then the court ordered, that the attorney general take nothing by his prayer. And that the prisoner be remanded to Newgate, in order to anfwer for the original offence he stands charged with in the information taken by Mr. Burdus, if the attorney general shall think fit to indict him for it. Fost. 51.

23. If any persons passing in a publick and avowed Officers may or manner, with prohibited or uncustomed goods, and armed pose force with with pistols, guns, cutlasses, or other offensive weapons, shall molest or resist the officers of the customs or excise, endeavouring to feize the fame, by beating, maining, or wounding them, or any person affisting them; they may oppose force with force: and if any person so resisting the officers be wounded, maimed, or killed; fuch officers, or persons affisting them in their defence, may plead the general issue, and give this act and the special matter in evidence; and all justices of the peace, and others, before whom they shall be brought, shall admit them to bail.

9 G. 2. c. 35. 1. 35.

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24. By the 13 & 14 C. 2. c. 11. Where any officer or Dangeroully officers of the customs shall be by any person armed with hurting an offi club or any manner of weapon, forcibly hindred, affronted, abused, beaten, or wounded, to the hazard of their lives, either on board any ship, or on the land or water in execution of their office; every person so abusing any such officer or his deputy, or fuch as shall act in his aid or affiftance, shall by the next justice or other magistrate be committed to prison to the next quarter sessions; and the said fessions shall punish him by fine, not exceeding 1001. and

the offender to remain in prison, till he be discharged by order of the exchequer both of the fine and of the imprifonment, or discover the person that set him on work. f. 6.

veight or more, transportation.

25. And by the 6 G. c. 21. If any officer of the cuftoms be forcibly hindred, wounded, or beaten, in the due execution of his office, by any persons armed with any mariner of weapon, tumultuously affembled by day or night, to the number of eight or more; the offenders shall be transported for any term not exceeding seven years.

And if any offender shall in two months after his offence, and before conviction, discover his accomplices so as two be convicted, he shall have 40 l. reward for each,

and be acquitted. f. 36.

And if any other person shall in three months discover any offender so as he be convicted, he shall have 401. over and above any other reward on account of the run goods. 1. 37.

The same to be paid by the receiver general, or cashier of the customs, on producing the judge's certificate. 1. 38.

Opposed on ship-

Hundred fhall

26. And by the 9 G. 2. c. 35. more generally it is enboard, transpor- acted, that if any officer of the customs or excise, being on board any ship, be forcibly hindred, wounded, or beaten, in execution of his office, either by day or night; the offender shall be transported for seven years. f. 28.

27. And by the 19 G. 2. c. 34. f. 6. If any officer or answer damages, other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten or killed, or the goods seized be refcued; the hundred shall answer damages, and also pay 1001. to the executors or administrators of such person killed, fo as the fum for beating exceed not 40 l. nor for the loss of goods 200 l. to be recovered and levied as in

> cases of robbery by the 8 G. 2. But no person shall recover damages for such beating or loss of goods, unless he give notice in four days to two inhabitants near, and in eight days make oath before a justice, whether he knew any of the persons concerned, and if he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give fuch also as persons robbed by the 8 G. 2. are directed to

give. id. f. 7.

And where the offender shall be convicted in fix months, the hundred shall not be liable. f. 8.

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28. If any action shall be brought for any thing done Treble costs, in pursuance of any act relating to the customs, excise, or salt duties; the defendant, if the plaintiff sails in his suit, shall have treble costs. 5 G. 3. c. 43. f. 47.

29. Offences relating to the customs or excise, made Felonies in relafelony by any act, may be tried in any county; but the tion to the cusattainder shall work no corruption of blood, loss of dower tried in any or forseiture of lands. 19 G, 2. c. 34. s. 5.

30. By the 5 G. 3. c. 43. To prevent collusive agree- Collusive feiments between the officers and importers; If any officer zures. of the customs or excise, or other person authorized to make feizures, shall seize any goods as forfeited by this act, or any tea, foreign brandy, arrack, rum, itrong waters, or spirits, as forfeited by the 9 G. 2. c. 35. on board any thip or vessel, and shall not seize and prosecute the thip or veffel; or if any fuch officer thall feize any goods whatfoever, which shall have been unshipped, landed, removed, or carried contrary to law, and shall not also feize and profecute the boat, veffel, cart, horfe, or other cattle, or carriage made use of in removing the same; and shall not discover to the commissioners of the customs or excise the persons concerned in unshipping or receiving fuch goods, so that they may be prosecuted: such office shall, instead of the moiety, have only one third of the net produce arising by the sale of such goods, and the remaining two thirds shall be to the king. f. 39.

31. By the 5 G. 3. c. 39. Power is given to the offi- Ide of Man, as cers of the customs and excise, to visit and fearch ships to castoms. and vessels, in any harbour or other place belonging to the isle of Man, and seize contraband goods there, as

they may do in Great Britain. f. 1.

And no wrought filks, bengals, and stuffs mixed with filk or herba, of the manufacture of Persia, China, or East India, nor callicoes painted or stained in any of those places, nor any cambricks or French lawns, shall be exported to the said island; on pain of seizure by the officers of the customs, and forseiture thereof, and of the goods contained in the same package therewith. s. 2.

And the ise of Man shall be added to and included in the bond which is now by law required to be given, that such goods shall be duly exported, and not relanded in any part of Great Britain. f. 3.

And no foreign spirits shall be imported into the said island, but only such as shall be bona side laiden and ship-Vol. II. B ped in Great Britain, and carried thither directly from thence; on pain of forfeiture of such goods, or the value thereof, together with the vessel and furniture. f. 4.

And no spirits shall be shipped in America, but on condition that the same shall not be landed in the said island.

1. 5.

And no foreign spirits shall be exported from the said island, or carried coastwise, in any ship less than 100 tuns burden, nor in any cask under 60 gallons (except for the use of the seamen, not exceeding two gallons each); and no wine shall be there imported, or exported, or carried coastwise, in any ship less than 100 tuns burden, nor in any cask less than 25 gallons; on pain of forseiture of the goods, together with the vessel and furniture. s. 6.

And veffels found hovering on the coast, or within three leagues thereof, having prohibited goods on board, (unless in case of necessity by distress of weather,) shall be forseited, with the tackle and furniture, together with

the faid goods. f. 7.

And no spirits shall be imported from thence into Great Britain, upon any pretence whatsoever; and vessels coming from thence, with spirits (except for the use of the seamen, not exceeding two gallons each) or other prohibited goods on board, sound hovering on the coasts of Great Britain or Ireland, or within three leagues thereof, (unless in case of necessity by distress of weather,) shall be forseited, together with such goods. s. 8.

And the feizures may be brought into any port in Great Britain, Ireland, or the faid island; and profecuted there respectively, and disposed in all respects, as in case of

seizures made in Great Britain. f. 9.

By the 5 G. 3. c. 43. The inhabitants of the faid island may import into Great Britain, bestials, or any goods of the produce and manusacture of the said island (except as above excepted, and except woollen manusactures, beer and ale); without paying any duty for the same, other than is paid for the like in Great Britain: Provided, that the person importing the same bring with him a certificate thereof from the proper officer there; and also make oath at the port of importation, that the goods are the same which were taken on board by virtue of the said certificate. s. 11.

But this shall not extend to give liberty to import into Great Britain from the said island any goods of the growth

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or fully manufactured in the faid island; except linen manufactures made there of hemp or flax, not being the produce of the faid island. f. 12.

And the bounties on exportation of British and Irish linens, shall be allowed on the like species of linen made in the isle of Man, imported into and exported from Great

Britain. J. 13.

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g2. Whereas tobacco, rum, and other goods are ship- mands of Fars, ped for exportation to the islands of Fars (being part of the dominions of the king of Denmark), with no other intent than fraudulently to reland the same; it is enacted, that no drawback or bounty shall be allowed for any goods exported to the said islands; nor shall any cocket or clearance be granted for exporting to the said islands any goods prohibited to be worn or used in Great Britain or Ireland. 5 G. 3. c. 43. f. 31.

And if any goods shall be entred for exportation, and shall be landed in the said islands; the drawback thereon shall be forseited; and the exporter, and master of the vessel, and every person concerned in exporting or landing the same, shall forseit treble value; and the vessel also, with the tackle and furniture, shall be forseited, and may be seized and prosecuted by any officer of the customs or excise; and the penalties and forseitures may be recovered as any forseiture incurred by any law of the revenue, and distributed half to the king (after deducting the charges of prosecution), and half to such officer who shall sue. s. 32.

And the faid islands of Fare shall be added to and included in the oath, upon all debentures for goods exported, whereon the exporter is to swear, that such goods are not landed or intended to be landed in Great Britain

or Ireland. . f. 33. which we lead don't elect but about

II. Of the excise in general.

London, or within ten miles thereof, to which all other commissioners. offices in the kingdom shall be subordinate and accountable; which said office shall be managed by such commissioners, as the king shall appoint. 12 C. 2. c. 24. f. 46.

under the immediate care and management of the faid head fioners, and office; and such and so many subordinate commissioners, other officers.

B 2

and accord. 12 C. 2. c. 24.

and subcommissioners, and other officers shall be appoint ed by the king in other places, as he shall think ht. 12 C. 2. c. 24. f. 48.

Office when to be kept open.

3. And the excise office in all places where it shall be appointed, shall be kept open from eight in the morning, till two in the afternoon. 23 G. 2. c. 26. f. 12.

Office in market 4. And the commissioners or subcommissioners shall appoint under their hands and feals, fuch persons as they shall think needful in each market town, to be there upon every market day, in some known and publick place, for receiving entries and duties, and performing all other things touching the revenue of excise: And if such office shall not be so kept in each market town, the commisfioners or others neglecting or refusing, shall for every market day forfeit 101. And fuch person as shall come to fuch market town to make his entry or payment, and tender the fame accordingly, and be able to prove fuch tender by oath of one witness, shall not be liable to any penalty for fuch weekly or monthly entries or payments, as should have been made or paid on such market day. 15 C. 2. c. 11. f. 10.

Collections, diftricts, and other divisiens.

Gagers.

5. The kingdom of England and Wales (exclusive of the bills of mortality) is divided into 49 collections; some called by the names of particular counties; others by the names of great towns, where one county is divided into feveral collections, or where a collection comprehends the contiguous parts of several counties: Every collection is subdivided into districts, within each of which there is a supervifor; and each diffrict is parcelled into out rides and foot walks, within each of which there is a gager or furveying officer. Gilb. Exch. Append.

6. The commissioners or subcommissioners, in their respective circuits and divisions, shall constitute under their hands and feals, fuch and fo many gagers as they shall find needful. 12 C. 2. c. 24. J. 33.

In order to which, he who would be made a gager, must procure a certificate, that he is above 21, and under 30 years of age; that he understands the four first rules of arithmetick; that he is of the communion of the church of England; how he has been employed, or what business he hath followed; that he is not incumbered with debts; whether fingle or married; and if married, how many children he has, for if he has above two, he cannot (by the rules of the office) be admitted. Gilb. Exch. App.

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He must also nominate two persons to be his sureties, and it must be certified that they are of sufficient ability; and that the said certificate is of his own hand writing: Such certificate, written by him, must be signed by the supervisor of excise where the party applying lives. id.

At the bottom of the certificate must be his affidavit, that neither he, nor any else to his knowledge, hath directly or indirectly, given or promised to give, any treat, fee, gratuity, or reward, for his obtaining or endeavouring

to obtain an order for his being instructed. id.

When an order for inftruction is granted, it is directed to an experienced officer, who receives fuch person as his pupil; and the like books as officers have, being delivered to such pupil, he goes with and attends the officer who inftructs him, and takes surveys, and in his own books makes the like entries as if he was an officer, until the inftructor certifies that he is fully instructed. id.

After he is thus certified for, and until he is employed, he is called an expectant, being to wait till a vacancy hap-

pens. id.

7. No person shall be capable of intermeddling with any Officer's oath office relating to the excise, until he shall before two justices in the county where his employment shall be, or before a baron of the exchequer, take the oaths of allegiance

and fupremacy, together with this oath following;

And the justices shall certify the taking of such oath, to the next quarter sessions, there to be recorded. f. 48.

And the officer shall also enter a certificate thereof with the auditor of the excise: And if any such person shall act before he hath taken the said oaths, and entered his certificate with the auditor aforesaid, he shall forfeit 50 l. a month. 15 C. 2. c. 11. f. 27.

And he shall also, within fix months after his admission to the office, take the oaths and subscribe the declaration against translubstantiation, at the quarter-sessions; in like

manner as other persons admitted to offices.

8. The business of the fupervisor is to be continually fur-Officers general veying the houses and places of the persons within his district liable to duties; and to observe and see whether the

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officers duly make their furveys, and make due entries thereof in their books and in the specimen papers; and every supervisor is in his own book to enter what himself does, each day and part thereof; and also set down the behaviour good or bad, the diligence or negligence, of the several officers of his district; and at the end of every six weeks, to draw out a diary of every day's business, and of the remarks made each day of the several officers in his district, and to transmit such diary at the end of every six weeks to the chief office. Gilb. Excb. Append.

Each commissioner takes and peruses a proportion of these diaries, and when he meets with any remarkable complaint against any officer, he communicates it to the rest; who thereupon come to an agreement, either to admonish, reprimand, reduce, or discharge. For small faults, officers are admonished; for great ones, reprimanded; for greater, reduced; but for the greatest, they are discharged. The commissioner who peruses the diary, writes in the margin, admonish, reprimand, or as the case is. id.

These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who in a book, called the reprimand book, places the admonitions, reprimands, and the like, to each officer's account, and writes every offender word thereof, Which reprimand book is resorted to, upon discovering new faults; and if it is there found, that the officer has before been admonished and reprimanded so often, that there are no hopes of his amending, he is then discharged. The said book is likewise resorted to, when application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded. id.

The collector's business is, every fix weeks to go his rounds; and in the intervals of rounds, he is to be affishing in profecuting offenders before the justices; he is also to peruse the supervisor's diaries, and where he finds an officer complained of, is to examine him and the supervisor, and having heard both, is in the margin to write his opinion of each fact; he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book, the charge on each particular person in his collection. id.

For faults, gagers are reduced, either to be only affiftants, or from foot walks to out rides; supervisors are reduced to be again only gagers; and collectors are reduced to be supervisors. id.

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In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged, are never again restored, unless one of the discharges appears to have been occasioned

by a mifrepresentation of the case. id.

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9. In the act of the 24 G. 2. c. 40. There is a general Penalties by the clause, which has a controlling influence on all that here- excise laws. after follows in this large title; which is this: All fines, penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means, as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at Westminster, and shall be half to the king, and half to him that shall inform or fue. 1. 33.

10. That is to fay, If it is within the limits of the chief By two justices. office in London, the offences shall be determined by the commissioners (or anythree of them, 1 G. 2. ft. 2. c. 16. f. 4, 5.)

or, in case of appeals, by the commissioners of appeals: in all other places, they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed: And in case of neglect or refusal of such justices by the space of 14 days next after complaint made, and notice thereof given to the offender; then the subcommissioners may hear and determine the same; And if the party find himself aggrieved by the judgment given by the said subcommissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final. Which faid commissioners for appeals, and chief commissioners for excife, and all justices of the peace, and subcommissioners aforefaid, are required upon any complaint or information exhibited and brought, of any such forfeiture made or offence committed, to summon the party accused, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof, either by the voluntary confession of the farty, or by the oath of one credible witness, to give judgment or sentence, and to iffue warrants under their hands, for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in 14 days; and for want of sufficient distress, to imprison the party offending till satisfaction be made. 12 C. 2. c. 24. f. 45.

Residing near Mr. Shaw, who seems to have taken some pains on this article (and after whom Mr. Barlow hath copied without owning it) faith hereupon, that B 4

where the next justices are impowered to proceed in any matter, they and no other ought in such case to act; but where it is only directed, that the justices residing near shall do such a thing, those words are not restrictive, but only directory, and any justices, althornot the next justices,

may proceed therein. Shaw Exc.

But where the act fays, that any two justices residing near to the place where the forfeiture shall be made, or the offence committed, shall hear and determine the matter, it doth not intend that the justices of a county at large, dwelling near to a town corporate, which hath justices of its own, and an exclusive charter, shall have power to intermeddle with regard to offences committed within such town corporate; but only to vest the jurisdiction in justices of counties, cities, and places, with respect to their local jurisdictions within such places. T. 14 G. 2. Talbot and Hubble. Str. 1154.

Upon any complaint or information exhibited By these words it is not necessary that the information be exhibited in writing; but if it is a verbal information, the justices ought to make a record thereof, and of the time and place, when and where exhibited, which must be expressed in the prefent, and not in the time past: But to fave the justices that trouble, it is usual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying fuch information, leaving therein blanks for the names of the justices, and the day and month and year and place when and where laid; and when those blanks are filled up by direction or consent of the justices, then it becomes a record made by them. The mentioning the place where the information is laid, is, that it may appear that the profecution was in the proper county; and therefore though it may happen, that for laying the information, the profecutor may be obliged to attend one justice in one town, and another justice in another town, it must not be mentioned, that the information was laid at both towns, for that would be abfurd; but in fuch cases it is usual to express that the information is laid at the town where the hearing is intended to be. Shaw Exc.

Proceed to the examination of the fact.] And by the 9 G. 2. c. 35. it is enacted, that in trials of feizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. f. 34.

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Give judgment] Altho' it hath been faid, that whatever is recorded by the justices or their order, ought to be expressed in words of the present time and tense; yet that doth not make it necessary, nor is it indeed practicable, that all that is to be so entered should actually be entred at the instant of time when such judgment is given; for such entring the whole at that time would hinder the dispatch of business, and delay the hearing of causes, and therefore may be done at any convenient time after; which if it be agreeable with, and according to such short minutes or notes as are then taken by such justices, it will be as authentick as if it had been entred at the instant of time in which such order was made, or judgment was given. Show Exc.

And to iffue warrants under their hands] Altho' it is here only directed, that the warrant shall be under the hands of the justices; yet since it is generally implied in all warrants, that they be both under hand and feal, it is safe at least, if not necessary, that this warrant also amongst the rest, be both figned and fealed.

For levying the same on the goods and chattels of the offender] And in case where the offender shall remove out of the jurisdiction, it is enacted by the 18 G. 2. c. 26. s. 13. and 5 G. 3. c. 43. f. 26. that the commissioners and juflices respectively within whose jurisdiction any person charged by any act concerning the duties of excise, or any other duties under the management of the commissioners of excife, or who hath committed any offence against any of the faid acts, shall be found, may summon, hear, adjudge, and determine, and iffue any process or warrant, in the fame manner as before they might have done in case of such offences committed within their jurisdiction; and if they shall, upon any judgment given by them, issue a warrant of diffress, and the person authorized to execute the warrant shall make a return thereto that no sufficient distress can be found, it shall be lawful for the said commissioners and justices respectively, within whose jurisdiction the party shall at any time be found, against whom such warrant shall have been issued, upon producing to them such warrant, and return thereof, to commit such offender to the next county gaol till fatisfaction be made.

And to cause sale to be made thereof if not redeemed in 14 days] But by the 27 G. 2. c. 20. the justices may not of der the distress to be detained more than eight days, nor less than four.

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Excise in general.

For want of sufficient distress Mr. Shaw and Mr. Barlow are of opinion, that where there are some goods, but not fufficient for fatisfying the judgment, yet those goods may be applied for that purpose so far as they shall extend, and the defendant shall be imprisoned for the residue; which may feem hard fometimes, when the defendant shall perhaps fatisfy nearly the whole fum, and moreover be imprifoned as much as if he had paid nothing; and it hath been adjudged in other cases, that a man shall not first pay part, and then be imprisoned for the residue, but shall either pay the whole, or be imprisoned for the whole: but perhaps the distinction may be this; where there is a limited time of imprisonment, as for instance, three months, there the defendant shall not pay part, and then be imprisoned the whole three months, which would be to punish him both ways; but where the imprisonment is till the penalty shall be paid, there the payment of the penalty is the thing chiefly regarded, and the imprisonment is not intended as a punishment, but as a mean to compel the payment of the penalty, and if part of it is paid already, the inlargement may come the fooner, by payment of the refidue.

Imprison the party till satisfaction be made But before any warrant can be made to arrest and imprison the person of the defendant; there must be first a warrant to seize the utenfils in custody of such offender, and the offender's goods; and that warrant must be returned: all which must be done, before any warrant can be regularly made, to arrest and imprison the defendant's person. Which method ought to be observed, tho' perhaps it may be well known by, or fufficiently proved before the justices, that all the utenfils and all the defendant's goods are carried off; for the law being in all cases very tender of depriving men of their liberty, it is necessary that all possible means should be used to levy the money on such goods, before the person of the defendant be imprisoned. But if a warrant to seize the utenfils and the goods, be made and delivered to an officer to be executed; and if such officer, having made diligent fearch, cannot find any fuch, then a warrant may be made to arrest and imprison the person of the defendant. But then there ought to be a duplicate made of fuch warrant; because the keeper of the prison cannot regularly receive the offender without a warrant, and the officer ought also to have and keep a warrant for his own justifi-

Summoning wit-

justices may summon witnesses, to appear before them at a

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certain day, time, and place, to be inferted in such fummons, and to give evidence; and in case of neglect or refusal to appear, or if upon appearance any shall refuse to give evidence, he shall forfeit 10 l. f. 24.

And a fummons left at the house or usual place of refidence, or with the wife, child, or menial servant of the person accused, shall be as effectual, as if delivered to the

person himself. 32 G. 2. c. 17. s. 1.

And in all cases relating to the excise, or to any of the duties under the management of the commissioners of excife (except where particular provisions are made for fummoning offenders, or for condemning of feizures made from persons unknown); the leaving such summons at the house, workhouse, shop, cellar, vault, or usual place of residence of fuch person, directed to him by his right or assumed name, shall be as effectual as if delivered to him in person, and as if directed to him by his proper name. f. 2.

d as it directed to him by his proper hance. J. 2.

Officer on trial

12. If upon trial, any question shall arise, concerning need not produce the keeping of any office of excise, or concerning any per- his commission. fon's being an officer; proof shall be admitted of the actual keeping of fuch office, or of fuch person's actually exercifing fuch office, without proving or producing the commission. 6 G. c. 21. s. 24. 11 G. c. 30. s. 32.

13. If on trial any dispute shall arise, whether the excise Proof to lie on or other inland duties have been paid for any foreign goods the owner. feized; the proof shall lie on the owner, and not on the

officer. 12 G. c. 28. f. 8.

14. One or more justices shall have power to administer Sworn valuers. an oath to any person skilled in the value of goods, vessels, or carriages, mentioned to have been feized in any information exhibited before the justices, to view the same, and make return of the species, quantity and value; and after condemnation, the faid goods shall be fold where the com-

missioners shall think proper. 12 G. c. 28. s. 16. 15. The justices, commissioners, or subcommissioners, respec- Mitigation, tively, where they shall see cause, may mitigate, compound, or lessen the forfeiture, penalty, or fine; so as the same be not made less than double the value of the duty of excise which ought to have been paid, besides the reasonable costs and charges of such officers, or others, as were employed therein to be to them

allowed by the faid justices. 12 C. 2. c. 24. f. 46.

Mitigate] But it is not necessary in the mitigation, to mention or distinguish so much for the offence, and so much for the charges; but after the juffices have agreed what fums to allow for the charges, the best way will be

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Excise in general.

to add those two sums together, and make their mitigation to such sum, as both when added together do amount unto: as suppose the justices do intend, that the desendant shall pay 10.1. for the offence, and 40 s. for the charges, the best way will be to make their mitigation to 12 l. without particularly mentioning that 10 l. thereof is for the offence, and that the 40 s. is for the charges; for in all cases it is wrong to infert in judgments more words or particulars than are necessary; and it is more particularly wrong in these cases, because the mentioning such unnecessary particulars may give a handle for cavils and disputes. Shaw. Exc.

Costs and charges] Generally the law doth not allow any costs or charges to be recovered on any penal law; and therefore to intitle the prosecutor to costs, over and above the penalty, express words for that purpose are necessary in an act of parliament. Shaw. Exc. But by the 27 G. 2. c. 20. the constable out of the money arising from the sale of the distress, may detain his reasonable charges of

taking, keeping, and felling the fame.

16. There is no appeal directed in the faid statute of 12 C. 2. from judgments given by the justices of the peace; for whereas it is enacted, in the faid statutes, that if the party find himself aggrieved by the judgment given by the subcommissioners, he may appeal to the next quarter sessions, these words, not being general, or fuch as may be applied equally, as well to the judgments given by the justices, as to judgments given by subcommissioners, they must be underflood as limited and restrained to such judgments only as are given by subcommissioners, in whom the parliament (it feems) did not so intirely confide as in the justices, but have made the aforementioned distinction between the judgment of the one and of the other; which must be observed and purfued: and therefore, generally, there lies no appeal to the quarter fessions from the judgment given by the justices, in matters relating to the excise. Shaw. Exc.

Nevertheless in some particular instances, such power is given by subsequent statutes; which will be mentioned under the special heads in this title hereaster following.

By the 15 C. 2. c. 11. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or subcommissioners, and given security to the commissioners of appeal, or justices of the peace, where the cause is to be finally adjudged, for such forseiture as was adjudged against him; and

Appeal.

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if upon appeal the judgment be reverfed, they shall restore the duty so deposited, or so much thereof as shall be adjudged on the appeal, and the party originally profecuting shall pay double costs; but if the judgment be affirmed the party appealing shall pay the like costs to the commissioners. J. 19.

And by the same statute, all differences and appeals about the excise, shall be heard in the proper county, and

not elsewhere. J. 22.

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And by the same statute, appeals within London, and the limits thereof, shall be within two months after judgment, and notice given or left at the dwelling house of the party: in all other places, in four months, and not otherwise.

17. It is generally provided by divers flatutes, that no Certicrari, certiorari shall be allowed to supersede the justices proceedings. 12 C. 2. c. 24. f. 50. 22 & 23 C. 2. c. 5. f. 14.

6 G. c. 21. f. 22.

18. Persons sued for any thing done on any act relating Treble costs. to the excise, or other duties under the management of the commissioners of excise, may plead the general issue; and have treble costs. 18 G. 2. c. 26. f. 15.

19. Offences relating to the excise made felony by any Felonies relating act, may be tried in any county; but the attainder shall to the excise work no corruption of blood, or forfeiture of lands. 19 where to be

G. 2. 6. 34. J. 5.

20. Any alehousekeeper harbouring an absconded per- Alehousekeepers Ion, against whom a process of arrest hath issued, for any harbouring ofoffence against the laws of excise or of the customs, after fenders. fix days notice of fuch absconding in two successive gazettes, and writing fixed on the door of the parish church where he last dwelt, shall forfeit 100 l. and have no licence for the future. 9 G. 2. c. 35. J. 30, 31.

21. No foreign liquors, for which excise ought to be Landing foreign paid, shall be landed, before entry made with the officer exciseable liquors or collector of excise, or before the excise shall be paid : before duty paid. and every warrant from any officer of the cultoms, for landing fuch foreign liquors, shall be signed by the officer or collector of excise in the port; on pain that the liquors landed otherwise, or the value thereof, shall be forseited, to be recovered of the importer or proprietor. 22 & 23 G. 2. c. 5. f. 9.

22. No person bringing any exciseable liquors (except Exciseable libeer, ale, cyder, perry, and metheglin) into any place by quors carried coast cocquet, transire, or certificate, nor any person to coastwise. whom the same shall be configned, shall land the same, without being entred with the officer of excise where landed; on pain of double value. 15 C. 2. c. 11. f. 18.

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Excise in general.

Concealing excifeable goods.

23. If any person shall conceal, or suffer to be concealed, any goods liable to the duties of excise, and inland duties; he shall (whether he claims any interest in them or not) forfeit the fame, and treble value. II G. c. 30. J. 16.

Constable to be affifting.

24. If on request made by any officer of excise, to a constable to go along with him, and to be present at the doing of any thing, at the doing whereof his prefence shall be necessary by any statute, he shall neglect or refuse or shall not go along with him, and be prefent at the doing thereof; he shall forfeit 201. 11 G. c. 30. f. 31.

Obstructing of-

25. If any person shall oppose, molest, hinder, or obstruct any officer of exeife, in the due execution of the powers given him by any act relating to the duties of excise; he shall forfeit 101. 6 G. c. 21. f. 7.

And actions of affault upon any officer of excise, may

be tried in any county. 9G. 2. c. 35. f. 26.

Further penalties for obstructing, wounding, or killing officers, in the case of run goods, have been inserted before, in treating of the customs.

Officer not to be

26. If any officer of the excise or customs shall deal in coffee, tea, brandy, or other exciseable liquors; he shall be incapable to hold any office in the revenue, and forfeit 50l. 15 C. c. 28. f. 7.

Officer taking a bribe.

27. No fworn gager, or other officer, shall take any bribe, for any matter relating to the excise; on pain of 101. 12 G. 2. c. 11. f. 16.

And a further penalty upon such officer is inflicted, in

divers instances hereafter mentioned.

And by the 11 G. c. 30. If any person liable to the duties of excise, or any other duties under the management of the commissioners of excise, shall give or offer to any officer of the faid duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it; he shall forfeit 500 l. f. 40.

in elections,

28. No collector, supervisor, gager, or other person Officer meddling concerned in charging, collecting, levying, or managing the duties of excise, or any part thereof, shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of a member of parliament; on pain of 100 l. half to the poor, and half to him who shall fue in the courts at Westminster; and moreover he shall be incapable to hold any office of trust under the king. 5 W. c. 20. f. 48.

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III. Of the several goods in particular, under the management of the commissioners of the customs and excise: viz.

Ale, beer, cyder, perry, mum, metheglin, mead, sweets; verjuice, and vinegar; candles; coaches; coffee, tea, and chocolate; glass; hops; leather; linen cloth and filks; malt; paper; plate; salt; soap; spirituous liquors; starch and hair powder; wire.

1. Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, vinegar.

1. By the feveral acts relating to that purpose, there Duty on ale and shall be paid by the importer before landing, for every beer imported, barrel of beer or ale imported, in the whole the sum of 18.5.

2. By the several acts there shall be paid in the whole, On home ale and for every barrel of beer or ale above 6 s. a barrel, brewed beer. by the common brewer, or any other person who shall sell or tap out beer or ale, the sum of 8 s. and for every barrel of 6 s. a barrel or under, the sum of 1 s. 4 d.

3. For every ton of cyder or perry imported shall be Duty on cyder paid 19 l. 10s. And if they are imported by foreigners, and perry imported.

4. And by the 3 G. 3. c. 12. for all cycler and perry Duty on home made in Great Britain, shall be paid a duty of 4 s. a cycler and perry hogshead to be paid by the maker. ——And every person who useth his own mill, press, or other utensil, for making cycler or perry for his own use, or procures cycler or perry to be made for him at the mill or press or in the utensil of any other person, shall be deemed a maker of

Provided that this shall not oblige the occupiers of such tenements as are not rated to the land tax at above 40s. a year, and pay accordingly, and who shall not make more than four hogsheads together in the whole in any one year, to pay the said duties or compound for the same.

cyder or perry within the meaning of this act.

And provided also, that persons compounding for the duties on malt, shall not be liable to compound for or pay the duties on cyder or perry, to be made and consumed in their own families only: But if they shall be

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defirous to fell or otherwise dispose of or remove the fame, they shall comply with the several directions appointed to be observed by compounders for the duties on

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cyder and perry.

And moreover, by fix feveral acts, for every hogshead of cyder and perry fold by retail, there shall be paid by the retailer, the sum of 6s. 8d. And by the 12 An. A.s. c. 2. 49. more, to be paid by the first buyer or retailer. f. 1. And by the r G, 3. c. 3. 4 s. more, over and above all other duties payable for cyder and perry fold by retail.

But a person buying for his own private use, and not being a dealer, shall not be charged. 1 G. 3. c. 3. s. 20.

And if they be used for distilling only, they shall not be charged with the faid 4s. imposed by the 12 An. st. 1.

c. 2. 3 G. 2. c. 7. f. 11.

Note; Every person who shall buy any cyder or perry, or any fruit to make into cyder or perry, and shall fell any of the cyder or perry, shall be deemed a retailer. f. 2.

And by the 1 G. 3. c. 3. Every person who shall sell any quantity of cyder or perry, less than 20 gallons at a time, whether made from fruit of his own growth or bought fruit, shall be deemed a retailer, and liable to the

4.s. additional duty imposed by this act. f. 21.

5. For every barrel of mum imported shall be paid the fum of 25s. And moreover by the 12 Ann. ft. 1. c. 2. and 13 G. c. 7. for every barrel of mum made or imported, over and above all other duties, shall be paid by the maker or importer, 10s.

Duty on metheglin and mead.

Duty on fweets.

In simboned of

Duty on mum.

6. For every gallon of metheglin or mead, fold by re-

tail or otherwise, shall be paid by the maker I I d.

7. For every barrel of liquor made for fale, by infusion, fermentation, or otherwise, from fruit or sugar, mixed or unmixed with other ingredients, commonly called fweets or made wines, shall be paid 12 s. 10 G. 2. c. 17. f. 2. But this shall not extend to wines made of British grapes.

Duty on verjuice.

Verjuice made for fale, shall pay as cyder and perry.

7 & 8 W. c. 30. J. 28.

Duty on vinegar imported.

9. For every tun of vinegar imported shall be paid 131. and if imported by strangers 30 s. more. And by the 18 G. 2. c. 9. and 3 G. 3. c. 12. 16 l. more for French vinegar, and other vinegar 81.

Duty on home vinegar.

10. For every barrel (at 34 gallons to the barrel) of vinegar, vinegar beer, or liquors preparing for vinegar, made for fale, shall be paid 113. 1d.

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Note;

Note; This shall extend to vinegar made for pickles, but not to vinegar for making white lead. 8 An: c. 7.

1. 4, 5: And all stale beer, returns of beer or ale, cyder, verjuice, or any other liquors proper to be made into vinegar, which shall be found in the possession of any com-

mon vinegar maker, (except fuch as are to be drank in his family, and which shall be kept separate for that purpose) shall be deemed vinegar, or liquors preparing for vinegar.

10 8 11 W. a. 21. f. 11.

11: By the 15 C. 2. c. 11: No common brewer, inn- Notice and entry keeper, victualler, or other retailer of beer or ale, shall of vessels and without first giving notice at the next office of excise, or king the same, to the commissioners or subcommissioners, or one of them, erect, alter, or inlarge, any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts; on pain of 501. And every other person, in whose occupation any house, outhouse, or other place shall be, where any such private tun, fat, back, cooler, or copper shall be found, shall also forfeit 50 l. And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited. f. 1.

And by the 8 & 9 W. c. 19. If any common brewer shall, without notice given at the next office of excise, set up any tun, batch, float, cooler, or copper, or alter and enlarge the same, or have any of them private or con-

cealed; he shall forfeit 200 l. f. 8.

And by 5 G. 3. c. 43. If any common brewer shall alter the position of any tun, batch, float, cooler, or copper, after the fame hath been fet up and fixed, without first giving notice thereof in writing to the officer; or shall place any boards, stone, wood, or any other matetials at the dipping place; or shall by any other means prevent or hinder the gager from taking true dips and gages of beer, ale, or worts; he shall forfeit 201. f. 25.

And the officer of excise in the day time, and in the presence of a constable, where he shall have just suspicion, that any private back, tun, or other concealed veffel or receptacle are used by any brewer, maker, or retailer of excileable liquors on request first made, and cause declared, may break open the door, or any part of his brewhouse, warehouse, or other room in his possession, and enter, and break up the ground in fuch house or room, or ground near adjoining in his possession, to search for such back, tun, or other veffel, or any pipe or conveyance leading thereto; and if he finds any private pipe or other VOL.II.

conveyance, he may fearch and follow the same, and if it shall lead into any ground, house, or place in the possession of any other person, on like request, and with a constable, he may enter the same, and break open the ground, or any part of the house if occasion shall be, to follow such private pipe, in order to find out such concealed back, tun, or vessel, making good the ground or house so broken up, or giving reasonable satisfaction to the owner: And if any person shall oppose such officer, he shall forseit 201. 7 & 8 W. c. 30. s. 27.

And if any vinegar maker shall without giving such notice, use any storehouse, warehouse, cellar, or other place for making or keeping any vinegar, vinegar beer, or liquors preparing for vinegar; he shall forfeit 50 l. 10 &

11 W. c. 21. f. 14.

In like manner, every person not being a compounder for the duties on cyder and perry, who shall intend to make any cyder or perry, shall, ten days at least before he shall begin to make the same, make entry in writing at the next office of excise, of his name, and of every mill or press or other utensil belonging to him for the making of cyder or perry; and also of every storehouse, warehouse, cellar, or other place, wherein he intends to make, say, or keep any cyder or perry: And if he shall make use of any mill, press, or other utensil, or storehouse, warehouse, cellar, or other place, either for making, laying, or keeping any cyder or perry, without having made such entry; he shall forseit 251. 3 G. 3. c. 12. s. 9.

And every fuch person, not being a compounder, who shall intend to make any cyder or perry, at any mill, press, or other utenfil, not being the property of such person, but of any other person, whether compounding or not, shall ten days at least before he shall begin to make the fame, make entry in writing at the next office of excise, of his name, and of the mill, press, or other utenfil so intended to be employed, and the name of the owner thereof; and also of every storehouse, warehouse, cellar, or other place wherein he intends to lay or keep fuch cyder or perry: And if he shall make use of any other mill, prefs, or utenful, storehouse, warehouse, cellar, or other place, either for making, laying, or keeping any cyder or perry, without having made fuch entry; he shall forfeit 251. Provided, that no owner of fuch mill, press, or other utenfil, which shall be let out to any other person, shall be obliged to give any notice of letting out the same. 4G. 3. c. 7. f. 3, 4

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And by the 1 G. 3. c. 3. f. 21. Every dealer in and retailer of cyder and perry, and other person receiving into his custody either of them for fale, and every person who shall buy any fruit to make into cyder or perry for sale, shall make entry of his storehouses, cellars, and other places, at the excise office within the district; on pain of

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In like manner, the maker of fweets for sale shall first give fuch notice, of his name and place of abode, and of the rooms and places he intends to use for making or keeping of sweets or made wines; on pain of 201. 10 G. 2. c. 17. f. 4. And any person who shall sell or use any the materials abovementioned, in making of wines, and in whose custody above two gallons shall be found, shall be deemed a maker of sweets for sale. 10 & 11 W. c. 21.

12. No common brewer shall keep any pipe or stop Private pipes cock under ground, or any other private conveyance, by which any beer, ale, or worts may be conveyed from one tun or brewing veffel to another, or into any other place, nor shall have any hole in any tun, batch, or float, by which any beer, ale, or worts may be conveyed into or out of the same; on pain of rool. 8 & g W. a. 19. f. 4.

And the excise officer in the day time, and in presence of a constable, on request made, and cause declared, may break up the ground in any common brewhouse, or the ground near adjoining, or any wall, partition, or other place, to fearch for any fuch private pipe, or other conveyance, and on finding may follow the fame, and break up the ground, house, wall, partition, or other place, thro' or into which the same shall lead, and break up or cut fuch pipe or other conveyance, and may turn any cock to try whether it can convey as aforefaid. f. 5.

And if on fearch no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall, or other place so broken up, or make fatisfaction to the owner; And if any person shall oppose such officer,

he shall forfeit 50 l. f. 6.

But any common brewer may use any pipes, stop-cocks, or other conveyances above ground, which are publick and in open view, for letting his worts out of his copper into his publick backs or coolers; and out of the fame into his tuns, batches, or floats; or out of the tun into his casks. f. 7.

13. No common brewer, innkeeper, victualler, or other Private cellar. retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying of any beer or ale,

or worts, in cask; on pain of 50 l. and every other perfon in whose occupation any such place shall be, shall also forfeit 50 l. 15 C. 2. c. 11. f. 1. 1 W. f. 1. c. 24.

Private person to be brewed in his house.

14. If any person inhabiting in a market town, city fuffering liquors or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer and ale to be confumed in his own private family, shall permit any beer, ale or worts to be brewed in his house, or other place thereunto adjoining, other than for his own family, fervants, labourers, or to others by way of charity, hospitality, or free gift; or shall lend out any of his brewing veffels, other than which are moveable and unfixt, he shall forfeit 501. 22 & 23 C. 2. c. 5. f. 10.

Gager to enter and take account.

15. The gager shall at all times, as well by night as by day (and if by night, then in presence of a constable) be permitted upon his request to enter the brewhouse, and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, worts, perry, cyder, or metheglin; and to gage all coppers, fats, and vessels in the same; and to take an account of all fuch liquors brewed or made therein; and thereof shall make return in writing to the commissioners or subcommissioners; which return shall be a charge upon fuch brewers, makers or retailers. 12 C. 2.

And if any brewer shall bribe the gager to make a false return, he shall forfeit 10 l. and the officer taking the bribe

shall also forfeit 101. 15 C. 2. c. 11. f. 16.

And if any fuch common brewer or retailer shall refuse to permit fuch gager to enter his brewhouse or other place aforesaid, or to gage or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gager to fell, carry out, or deliver to any of his cuftomers, any beer, ale, or other the liquors aforefaid; and if he shall after such warning given, sell, carry, or deliver out the same, or any part thereof, not having paid the duty of excise, he shall besides the forfeiture of double value, forfeit also the sum of 101. 12 G. 2. c. 24.

And by the 7 & 8 W. c. 30. If any common brewer. innkeeper or victualler, shall on request or demand made by the gager in the day time, or in the night in presence of a constable, refuse to permit him to come into his

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house, brewhouse, or other place used by him; or being entred, shall refuse him to stay in the brewhouse, whilst his guile is brewing, and quietly gage and take an account of the several worts as they are brewed off, and let into his backs and tuns, and to see their strong and small drink cleansed and carried out without mixture, and to take an account of the goods in the mesh tun, or the quantity of malt from which such worts are made; he shall forseit 201. and the prosecutor shall not be obliged to prove that the party carried out any part of such guile before he paid the duties. f. 22.

And by the said act, if any maker of vinegar, cyder,

And by the faid act, if any maker of vinegar, cyder, metheglin, mead, or sweets for fale, shall conceal any vinegar, or liquor prepared for vinegar, or any cyder, metheglin, mead, or sweets from the view of the gager, he shall for every harrel of vinegar or liquor prepared for vinegar, or sweets, forfeit 40s. for every hogshead of cyder 40s. and for every gallon of metheglin or mead 5s.

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And if any maker or retailer of vinegar, or other the liquors last mentioned, shall on request or demand made by the gager in the day time, or if by night in the presence of a constable, refuse to permit him to enter his house, storehouse, or other place used by him, and to take account of the said liquors; he shall forfeit 151.

f. 17.

And the officers shall be permitted in the day time, on request, to enter the mill-house, storehouse, warehouse, cellar, and all other places, used, by any person for making, laying or keeping of cyder or perry; and to gage and take an account, and make a return to the commissioners or to such persons as they shall appoint, leaving a true copy under their hands with the maker.

—And if any person shall oppose the excise officer, or endeavour to rescue any cyder or perry seized as forfeited, or after seizure shall stave or damage any cash, vessel, or package, he shall forfeit 501. 3 G. 3. c. 12. st. 10, 22. 4 G. 3. c. 7. st. 3, 6.

16. As often as there shall be occasion, two able artists Indifferent gashall be appointed, one of them by the commissioners or sers may be subcommissioners, and the other by the brewers of any city or place; who shall be sworn before a justice, to take and compute the just contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing vessels of that nature, and to deliver under their hands one copy of the contents to the commissioners and sub-

C 3 commissioners,

commissioners, and another to each respective brewer. 15 C. 2. c. 11. f. 7.

Brewer to declare how much he intends to make,

17. Every common brewgr who shall make any guile of beer or ale, shall declare to the gager, how much strong beer or ale he intends to make of such guile, and how much small, before any part of the guile is cleanfed or removed out of his tuns; and if fuch brewer or his fervants shall refuse to make such declaration, the gager shall return the whole as strong, and the brewer shall also forfeit for every harrel in such guile 20s. And if fuch brewer or his fervants after fuch declaration shall make any increase of the strong beer or ale, or if the gager shall find any beer, ale, or worts of the same guile laid off, over and above the quantity fo declared; he shall forfeit for every barrel so increased, laid off, or found over and above fuch quantity 51. and the fervant affifting therein 20s. and in default of payment be imprisoned three months: And if on an information against the brewer for the faid penalties, it appear by his evidence, that the strong beer or ale so declared, was increased by adding to or mixing with it any beer or ale that was left in the brewhouse of a former guile, he shall nevertheless incur the penalties, except it be also proved upon oath that the strong beer or ale so added to such guile, was added in the fight and view of the gager. 8 & o W. c. 19. . 2.

Mixing drink of 18. And whereas many brewers, having frong beer a former brew- or ale remaining in the brewhouse from the time it was brewed, until the next guile or brewing, the quality of which they frequently alter by mixing with the fame new fmall beer, or old returned drink, and then add the beer and ale so altered to the next guile; if it shall appear to the gager that the quality of fuch ftrong beer or ale fo remaining in the brewhouse of a former guile, and added to a guile of new drink, hath been so altered fince it was brewed, he shall return all such beer and ale so altered and added to a guile of new drink, as if the same were then originally brewed, and had never been charged before. 8 6 9 W. c. 19. f. 3.

is brewed off.

19. If any common brewer, innkeeper, or victualler, before the whole shall cleanse or remove out of his brewhouse any part of his guile, or brewing of beer, ale, or worts, before the whole of fuch guile is brewed off, and be in his tuns, backs, or coolers, and until the gager shall or might have taken an account of the same, without first giving notice to the supervisor or gager, at what time, committoners,

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and how much of fuch guile or brewing he intends to cleanse or remove, and where he intends to dispose of the same; he shall for every barrel forseit 40s. 7 & 8 W. 6. 30. /. 21.

20. Where it shall appear to the gager, that any worts Gager may are miffing, or not fairly let down into the tun, and the charge for worth gager cannot find the same, he may charge for so much beer or ale, as fuch worts fo missing would reasonably

make. I W. ft. 1. c. 24. f. 6.

21. Gagers may take their gages, and make their re- Gage may be turns and charges, upon warm worts in the backs, coolers, taken in warm worts. or other veffels; and in fuch case make allowance of one tenth part thereof for wash and waste; which worts shall not be afterwards charged, when made into beer or ale. I W. A. I. c. 24. J. 7.

22. If any common brewer, inkeeper, victualler, or Mixing small other retailer of beer or ale, shall after an account hath beer with strong been taken by the gager, convert any small beer or small worts into strong beer or ale, by mingling the same, and shall fell, deliver out, or retail the fame, without giving notice to the same gager, of the quantity so mingled and converted, or if any fuch brewer or retailer shall conceal or convey any beer, ale, or worts not gaged, from the fight of the gager, whereby the king may be defrauded of the duty; he shall forfeit 20 s. a barrel. 15 C. 2. c. 11. f. 12. 1 W. feff. 1. c. 24. J. II.

And by the 2 G. 3. c. 14. If any common or other brewer, innkeeper, victualler, or retailer of beer or ale, shall mix, or cause or suffer to be mixed, in any vessel, tub, measure, or otherwise howsoever, any strong beer, ale, or firong worts, with any small beer or small worts or with water, after the gauge shall have been taken; he

shall forfeit 501. J. 2. 23. No common brewer shall fell, deliver, or carry out Time of deliverany beer or ale to any of his customers, either in whole ing out. calk or by the gallon, in any city or market town, before notice given to an officer of excise, but between three in the morning and nine in the evening from Mar. 25, to Sep. 29. and between five in the morning and seven in the evening between Sep. 29. and Mar. 25. on pain of 20 s. a barrel. 15 C. 2. c. 11. J. 11.

And by the 10 & 11 W. c. 21. No vinegar maker shall receive into his custody any liquors for making of vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from Sep. 29. to Mar. 25. yearly, between seven in the morn-

livered out,

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ing and five in the evening; and from Mar, 25, to Sep. 29. between five in the morning and feven in the evening on pain of 501. f. 12.

And on receiving fuch liquors into his cuftody, he shall shew the same to the gager before he mix them with any other liquors, rape, or other materials; on pain of 20 l.

id. J. 13. Mixing after de-

24. If any common brewer, or innkeeper, shall on carrying out his drink, or after it is carried out, mix any fmall beer or fmall worts, with any ftrong beer or ale on his dray, or in any victualler's cellar, or other place; he shall forfeit 51. and the gager may taste the drink upon the dray, and also on request may enter the cellar or other room in the pollession of any innkeeper or victualler that shall receive any drink from a common brewer, and taste the drink in the fame; and if the innkeeper or victualler shall refuse him to enter into his cellar or other rooms, or to tafte the drink in the same, he shall forfeit 31. 7 8 W. c. 30, 1, 23.

Mixing by the retailer.

25. No retailer of beer or ale, shall after the receipt thereof from the common brower, mix any beer, ale, or worts of extraordinary strength, with any small beer, ale, or worts, in any veffel containing three gallons or more; on pain to forfeit for every barrel fo mixt, double the duty of excise for strong beer or ale, and so proportionably for any greater quantity. 22 & 23 C. 2. c. 5: f: 11.

Measure and allowance for leakage, within tality.

26. And for avoiding uncertainties in the returns of the gagers, the barrel of beer (within the bills of mortality) the bills of mor- shall be 36 gallons of four quarts to the gallon, according to the standard in the exchequer; and the barrel of ale 32 gallons: And all other the liquors aforefaid, shall be reckoned according to the wine gallon, 12 G. 2. c. 24,

f. 34. 1 W. ft. 1. c. 24. f. 5. 3 G. 3. c. 12. f. 11.

And the common brewer, not felling the same by retail, for waste by fillings and leakage, shall be allowed on every 23 barrels of beer, whether strong or small, three barrels; and upon every 22 barrels of ale, two barrels. 12 C. 2. c. 24. f. 36.

But if any common brewer shall make a false entry, and be convicted thereof; he shall, over and above other penalties, forfeit the faid allowance for fix months then nex enfuing. 12 C. 2. c. 24. f. 37.

In other places.

27. In all other places, 34 gallons shall be reckoned for a barrel of beer or ale; and the allowance for waste shall be 21 on every 23 barrels. 1 W. A. 1. c. 24 f. 5.

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28. Notes of every gage, figned by the gagers, contain- Notes of the gag ing the inches and tenths of the backs, and wants of the and charge to be tuns and quality of the liquors, shall be left by them with left. the common brewers of ale or beer, or some servant (if demanded) at the time of taking the gages; on pain of

40s. 7 & 8 W. c. 30. f. 46.

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And by the same act, the gager shall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their fervants, a true copy under his hand of each respective charge by him made, containing the quantity and quality of the liquors by him charged in fuch week; and if he shall neglect or refuse (after demand in writing, 12 G. c. 28. f. 30.) to leave fuch copy, or shall charge such person more than such copy contains, he shall forfeit 101. f. 25.

29. The commissioners of excise or appeals, or justices Relief in case of of the peace, on complaint of any over charge returned over charge. upon them by the gager, shall hear and determine the complaint, and examine witnesses on oath, and thereupon, or by other due proof, may discharge such complainant of fo much of his charge as shall be made out before them.

1 W. feff. 1. c. 24. f. 13.

30. All common brewers of beer and ale, shall once in Entry and page every week; and all innkeepers, alehousekeepers, victual ment of duties. lers and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making or retailing the same, shall once in every month, make entries at the excise office, of all fuch liquors brewed, made, or retailed in that week and month respectively. 12 C. 2. c. 24. f. 29. Sel Ci Dalwill also mits become

And all fuch common brewers who do not once a week make due entries, shall forfeit 101. And every such innkeeper, who doth not make true entries once a month. shall forfeit 51. And every alchousekeeper, victualler, or other retailer, who doth not once a month make due en-

tries, shall forfeit 20 s. id. f. 30.

And every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty; and every innkeeper, alehousekeeper, victualler, or other retailer. who shall not pay within a month after he made his entry, or ought to have made his entry, shall pay double value of the duty. id. f. 31.

Provided that no fuch person shall be compelled to travel for making the faid entries, or payment of the faid duties, or other cause whatsoever touching the same, if he live in a market town, out of the faid town; if he live

out of a market town, then to no other place than to the next market town to his habitation in the same county, on

the market day. id. f. 32.

But no common brewer shall be prosecuted for any forfeiture for any misentry or short entry, if he shall in one week after the delivery of the copy of the return made by the gager, rectify his entry according to the faid return, or otherwise discharge himself. 15 C. 2. c. 11. s. 6.

But no brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment; if it shall appear by the evidence, that he did not bona fide shew to the gager all the beer, ale, and worts of each respective guile, for such time for which fuch copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which fuch copy of the return is made or given by the gager. I W. feff. 1. c. 24. f. 10. a self yet marie moo

And by the 4 G. 3. c. 7. s. 1. The duties on cyder and perry shall be paid within fix calendar months after making

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31. But if any person shall brew, and sell by retail, ling in fairs. any small quantities of beer or ale in any fair, who is not otherwise a common brewer or retailer thereof, and shall before fuch felling and retailing, pay the excise for the same; he shall be freed from all penalties relating to such entries, and the like. 12 C. 2. c. 24. f. 39.

32. If any fweets, having paid the duty, shall be inmoval after duty tended to be removed, the excise officer shall on request give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be fent; and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10s. a gallon, and

also the liquor and casks. 6 G. c. 21. s. 22.

And by the 3 G. 3. c. 12. No cyder or perry, exceeding fix gallons, shall be removed by land or water, without a certificate, (which the officer shall give without fee) expreffing the quantity, the number of casks or package, the name of the person from whom removed, the place to which, and the name and place of abode of the person to whom the fame is fent; and distinguishing therein, whether the same is to be removed from the mill where the fame was made, into the premisses of any compounder or of any person exempted from paying duty or compounding, or of any other person chargeable with the said duty; and if removed out of the flock or storehouse of

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any compounder or other person, then distinguishing from whose stock or warehouse the same is intended to be removed; and if the same shall have been charged with any duty, then with what duty the same has been so charged; or if condemned, then that the same had been condemned as forseited; on pain of forseiting the same, together with the casks, vessels, or other package, which shall be sound removing without such certificate, and which may be seized by any officer of excise. In which certificate, the officer shall express and limit the time for which it shall continue in sorce. \(\int \text{. 13.} \)

33. The commissioners and subcommissioners may com-Compounding, pound with innkeepers and others for the duties. 12

C. 2. c. 24. f. 40.

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But no person who hath compounded shall, during the term of such composition, suffer any beer or ale to be brewed within his brewhouse, for any other common brewer, without first giving notice to the commissioners or subcommissioners, and forthwith paying down the excise thereof; upon pain that as well the brewer who shall brew the same, as the brewer for whom it shall be brewed, shall forseit 51. for every barrel. 15 C. 2. c. 11. f. 14.

And by the 3 G. 3. c. 12. f. 15. and 4 G. 3. c. 7. f. 1. Persons may compound for the duties on cyder and perry to be consumed in their own families, giving in a list of such family, at the rate of 2 s. a head by the year: If the family shall increase, then to give in fresh lists, and to pay 2 d. a month for each additional person to the end of the year. And if any compounder shall deliver in a salse list, or neglect to deliver in a fresh list on the increase of his family, or to pay the proportionable composition, he shall forseit 201.—Provided, that no compounder shall be obliged to insert in such list the names of his children under eight years of age, or to reckon them as part of his family.

Compounders having more cyder or perry than is necelfary for their own families, may dispose of and remove the same, giving two days notice to the officer, who in such case shall attend and charge the duties; and the same shall not be removed without such certificate as aforesaid. And if any such compounder shall fraudulently dispose of or deliver out any cyder or perry without such notice, or before the duties have been charged, he shall forfeit 201.

3 G. 3. c. 12. f. 16.

And for the better accommodation of fuch as shall compound; when any such maker shall intend to sell or dif-

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pole of any cyder or perry immediately from the mill pound's mouth, or place where the fame shall be made, the officer of excise shall, during the time of making, and at no other time, deliver to the maker (if demanded) in writing, a fufficient number of blank certificates, numbered one, two, three, and so on in arithmetical progresfion, to be filled up by fuch maker, and fubscribed by him or her, who shall express in each of the faid certificates that shall be filled up, the exact number of gallons intended to be fent therewith, and the number of cafks or package containing the same, and the place to which, and the name and place of abode of the persons to whom fent, and the time when fuch certificate is filled up; which certificate, provided it accompanies the quantity mentioned therein, shall be a sufficient protection for the removal of such cyder or perry, immediately from the mill pound's mouth, or place where the fame shall be made: And the officer, at the same time that he delivers the blank certificates, shall also deliver a like quantity of blank counterparts of the same, bearing the same numbers. And fuch maker shall give a receipt for the faid certificates and counterparts. And the counteparts, so filled up, shall be returned to the officer, whenever he shall require the fame; and shall then also shew to the officer all the certificates and counterparts not filled up. And when he delivers up the counterparts, he shall declare upon oath, to be administred by the supervisor, that the feveral quantities specified in the counterparts contain the whole quantities disposed of. And the officers shall, from the faid counterparts to filled up and fworn to, make return in writing to the commissioners or to whom they shall appoint, leaving copies under their hands with the maker; Which returns shall be the charge upon the maker, who shall pay the duties accordingly, within fix calendar months from the time of making fuch charge. And if such maker shall neglect or refuse to deliver to the officer, when required, all the counterparts filled up; or to declare upon oath as aforefaid; or to shew to the officer all the certificates and counterparts not filled up; or shall dispose of more cyder or perry from the place of making than is mentioned in fuch counterparts fo delivered up; or shall fraudulently infert in the blank of either counterpart or certificate, a greater or less quantity than is really fent; he shall forfeit 251. And no Such certificate shall be in force, but between Sep. 1. and Dec. 31. in each year, And fuch maker shall yearly, within

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within ten days after Dec. 31. deliver to the officer all the blank certificates and counterparts not filled up; on pain of 25 l .- And if the officer shall refuse or wilfully neglect to leave a true copy of his report in writing with the maker; or to grant a certificate for the removal of any cyder or perry, on reasonable request made for that purpose; or if any maker shall offer to compound, and the officer shall refuse or wilfully neglect to accept such composition; he shall forfeit 40s. 4 G. 3. c. 7. s. 5, 7.

34. All the brewing vessels and utenfils for brewing, Utenfils liable to into whose hands soever they shall come, and by what the penalties and conveyance, or title foever they be claimed, shall be sub-duties. ject to all the debts and duties of excise in arrear for any beer or ale made in the faid brewhouse; and shall also be fubject to all penalties and forfeitures against the laws of excise; and it shall be lawful to levy debts and penalties, and use such proceedings against the utensils therein contained, as it may be lawful to do, in case the debtor or offender using the faid utenfils had been the real owner thereof. 15 C. 2. c. 11. J. 13.

35. No information shall be brought against any com- Limitation of mon brewer, or alchousekeeper, vinegar maker, or cyder actions. maker, for any misentry or offence, but within three

months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling house, within a week after laying and entring the information. 1 W. fest. 1. c. 24. f. 16. 12 & 13 W. c. 11. f. 17. 3 G. 3. c. 12. f. 23.

3 G. 3. c. 12. J. 23.

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And by the 3 G. 3. c. 12. Persons aggrieved by any order of the justices, with respect to the duties on cyder and perry to be paid by the maker, may appeal to the next fessions, giving fix days notice in writing. And if there be not fix days between the order and the fessions, then the appeal to be to the next fessions after. And the fessions may rectify defects in form; and may award costs to either party, to be levied by warrant of two justices by diffress. J. 24, 25, 26, 27.

36. If any common brewer, or maker of cyder, making Delivering matebeer, ale, or cyder for fale, shall deliver to any distiller or rials to distillers. vinegar maker, any wash, tilts, ale-beer, vinegar-beer, or cyder, without first giving notice to the gager, what quantity he intends to deliver, and when, and to whom; he thall forfeit for every barrel 20s. 8 & 9 W. c. 19. f. 9.

37. Ale, beer, cyder, or mum, may be exported; pay- Exportation.

ing custom 1 s. a ton. 1 W. A. T. c. 22. gitting to be thing at

And on exportation thereof the excise shall be repaid, 22 & 23 C. 2. c. 5. f. 15. 7 G. fl. 1. c. 20. f. 31.

But by the 1 G. 3. c. 7. on repayment of the excise on strong beer and ale, there shall be a deduction of 3 d. a

And when barley is at 24s. a quarter or under; a bounty shall be paid to the exporter of strong beer of ale, of 1s. a barrel. s. 6.

II. Candles.

Duty on candles imported.

1. For every pound of tallow candles imported, shall be paid in the whole, by the several acts, 2 d. \(\frac{1}{4}\). 2 W. seff. 2. c. 4. \(\int\). 37. 8 An. c. 9. \(\int\). 1. 9 An. c. 6. \(\int\). 11.

For every pound of wax candles imported, 8d. 8 An.

c. q. f. 1. 9 An. c. 6. f. 11.

Duty on candles made in Great Britain,

2. For all candles made of wax, or usually called or fold for wax candles (notwithstanding the mixture of any other ingredients) made in *Great Britain*, shall be paid 8d. a pound.

All other candles 1 d. a pound. 8 An. c. 9. f. 1. 9 An.

c. 6. f. 11.

Ruft lights ex-

3. But the faid duties shall not be charged on such small rush lights, as shall be made by any persons to be used in their own houses only, so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in, or once drawn thro' grease or kitchen stuff, and not thro' any tallow melted or refined. 8 An. c. 9. s. 31.

Oil not to be used instead of candles. 4. During the continuance of the duties upon candles, no person shall use in the inside of his house, any lamp, wherein any oil or fat (other than oil made of fish within Great Britain) shall be burned for giving light; on pain

of 40s. 8 An. c. 9. f. 18.

Places of making candles to be entred.

5. No maker of candles shall erect, set up, alter, or use any melting house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, surnace, moulds, or other vessel for melting of wax, tallow, or other materials to be made into candles; without notice thereof being sirst given in writing at the next office of excise: on pain of 501. 8 An. c. 9. s. 6.

And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be nother A

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be made, or notice given, shall be forfeited, or the value

thereof. 8 An. c. 9. f. 17. And by the 11 G. c. 30. If any maker of candles fexcept compounders) shall use any melting house, shop, or other place, for making or keeping of candles, or for melting or keeping of wax, tallow, or other materials, or use any copper or other vessel for melting the same, or any moulds or other utenfils for making of candles, without having made entry thereof in writing at the next excise office; he shall forfeit 1001. f. 23.

And the officer, between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening and five in the morning, with a constable, shall be permitted on request to enter and search; and all chefts and other like things locked up, shall on his request be opened; on pain that every person obstructing or molesting him, shall forfeit 100 l. 11 G. c. 30. f. 24.

And if the officer on his fearthing any unentered house or place, shall find candles either made or making, or tallow or other materials melting or melted, or cottons or rushes ipread, or any copper, mould, or other utenfil warm with tallow or other materials; this shall be sufficient evidence to convict the offender in the penalty of 100 l. for having used the same not being entered. 11 G. c. 30. s. 25.

And leaving a fummons at the place where the discovery was made, directed to the person prosecuted by his right or affumed name, shall be deemed as effectual as if perfonally delivered to him, and by his proper name. id. £ 26.

6. The officer shall at all times, by day or by night, Officer to enter and if in the night, then in presence of a constable, be and take acpermitted on his request, to enter the house, melting count. house, warehouse, or other place, belonging to, or used by any perion who shall be a maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of fuch report, under his hand, with or for the maker; and if he shall refuse or neglect to leave fuch copy (on demand thereof made in writing, 12 G. c. 28. f. 30.) he shall forfeit 40 s. 8 An.

7. And the maker shall keep just scales and weights, The maker to where he makes his candles; and shall permit and affift keep scales and the officer to make use thereoff on pair of the the officer to make use thereof, on pain of 101. 8 An.

6. 9. f. II.

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Notice and time of making.

8. No maker of candles for fale, shall begin to make any course or making of candles, without notice thereof first given to the officer, unless from Sep. 29. to Mar. 25. yearly, between feven in the morning and five in the evening; and from Mar. 25. to Sep. 29. between five in the morning and feven in the evening; on pain of 10 l. An. c. 26. f. 107.

Maker to declare fizes,

9. Every maker of candles for fale, shall before he bethe number and gins to make or dip any making or course of candles, declare to the officer the number of flicks he defigns to make, and the fizes of the candles whereof each flick is to confift; and if fuch making or course is intended to be of moulded candles, then he shall declare to the officer, before he begins to fill the moulds, how many moulds he intends to fill at fuch making, and how often he intends at fuch making to draw the moulds: and if he shall neglect or refuse to make fuch declaration, or shall after fuch declaration make any increase of his number of sticks, or of the sizes of his candles in fuch making of course; or in the case of making mould candles, shall fill a greater number of moulds, or draw fuch moulds oftner than shall be declared; or if he shall, after the weighing of any making of candles by the officer, increase the weight of such candles, by redipping, or otherwise; he shall forseit 101. 10 An. c. 26. s. 106.

And by the 11 G. c. 30. If any maker of candles for fale, shall begin to make any course of candles, not being mould candles, or make preparation for the same without notice in writing to the officer of such his intention, and of the time of the day or night when he intends to begin, and of the number of sticks of which such making is intended to confift, and of the fizes and number on each flick; he shall in default hereof, or if he have at such making more sticks, or more candles, or larger than mentioned in the notice, forfeit 501. and if after fuch notice, he shall not begin at the time, or within three hours of

it, fuch notice shall be void. f. 27.

And lighting a fire under a veffel for melting the materials, or finding in fuch veffel, or in any mould, the materials melted or melting, or cottons or ruthes spread or fpreading, shall be deemed to be fuch a beginning to work, as shall make him liable to the faid forfeiture. f. 28.

The officer shall charge for materials miffing.

10. The officer shall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive fatisfaction what is become thereof, the officer may

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charge such quantity of candles, as the materials so missing o make in his judgment would have made, not exceeding 108 lb. thereof of candles for every 112 lb. of materials missing, and so Lar. 25. proportionably. 8 An. c. 9. s. 12. e even-And if any such maker shall obstruct the officer, he shall in the

forfeit 201. J. 13.

II. Candles cracked or spoiled in making, may be de- Candles spoiled faced by the officer, who shall make allowance for the in making.

duty. 8 An. c. 9. f. 29.

12. No maker of candles shall (on pain of 201.) remove Removing canany candles, before the officer hath taken account of the dles before fursame, without giving to the officer, within the bills, 24 veyed. hours notice; and elsewhere, two days notice, of his intention to remove the same. 8 An. c. 9. s. 14.

13. The maker shall keep his candles which have not candles unforbeen surveyed, separate from all other candles which have veyed to be kept been surveyed, for 24 hours after making, within the bills, feparate.

and for two days elsewhere; unless they shall have been sooner surveyed by the officer: on pain of 51. 8 An. c. 9.

1. 15.

14. If the officer shall have cause to suspect, that can-Search for candles are privately making in any place; or that any can-dles concealed. dles are concealed with intent to avoid the duty; in fuch case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize fuch officer, by day or night (but if in the night, in presence of a constable), to enter into every such place sufpected, and to feize and carry away as forfeited all fuch candles as he shall there find so privately making, together with all materials then ready or preparing for making the fame, and also all such candles as they shall find so concealed, together with the boxes or other package containing the same: And the person that shall be found privately making fuch candles, or in whose possession any such shall be found, shall forfeit 100 l. 5 G. c. 43. s. 20.

15. If any maker of candles for fale, shall mingle can-Further p-nalty dles which have not been weighed by the officer, with of removing, those which have; or shall fraudulently remove any before cealing, or conweighing; or conceal any candles or materials; he shall

forfeit 1001. 11 G. c. 30. J. 30.

16. Every person who shall make any candles within Entry of candles the bills of mortality shall monthly, and elsewhere once made. in every fix weeks, make a true entry in writing, at the next excise office, of all candles by him made within such time; which entry shall contain the weight, number, and Vor. II.

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rals : and of at the n demand fficer may charge fize of the candles, and what quantity thereof was made at each course in the several weeks; on pain for every neglect of entry to forfeit 201. Which entry shall be upon the oath of the maker or his chief workman, according to the best of their knowledge and belief; the said entries and oaths, within the bills, to be made with and adminifired by fuch officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or 8 An. c. 9. J. 7. fupervisors.

But he shall not be obliged to go further than the next

market town, for making such entry. f. 8.

Duty to be cleared off.

17. And the maker shall in four weeks within the bills. and elsewhere in fix weeks, after such entry, pay and clear off the duties; on pain of double duty : and no maker after default in payment shall sell, deliver, or carry out any candles till he hath paid off the duty, on pain

of double value. 8 An. c. 9. f. 9.

Candles not entred, nor duty

18. And if there shall be found in the possession of any maker of candles for fale, any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been paid; he shall be chargeable with the duties, and if he do not pay the fame, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave fix hours notice in writing to the officer, or at the next excise office, of his intention to buy the fame, and of whom. 11 G. c. 30. f. 29.

Candles where to be fold.

19. No person shall expose to fale any candles, unless in his publick thop or warehouse, publick fair or market;

on pain of 51. 8 An. c. 9. f. 18.

Compounding.

20. The commissioners or such person as they shall appoint, and in default thereof the collector or fupervifor, may compound with persons that make candles for their own private houses, for the duties, at 1 s. a year for every head in the family, to be paid quarterly; and fuch person shall not be liable to the duties. 8 An. c. 9. f. 20.

But if any person after composition shall sell or deliver out any candles, or shall permit any other person to make candles in his house or outhouse; or shall have more persons of his family than he shall compound for, without giving notice of them in writing at the next excise office, at or before the next quarter day, and paying the like composition for them, he shall forfert 51. and lose the benefit of his composition, and be liable to the duties and survey of the officers; and for every pound of candles fo privately fold or delivered out or made, thall forfeit 5s. f. 21. And

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And every fuch compounder, who shall make default in continuing the fame, shall in ten days make entry upon oath of all fuch candles as he shall be possessed of, at the excise office, on pain of forfeiting 201, and the candles of which no fuch entry shall be made; and in fix days after fuch entry, shall pay the duties, on pain of double value of the candles, and his houses and other places shall be liable to the fearch of the officers, 9 An. c. 6. f. 14.

21. Cocquets granted for shipping candles to be landed Candles carried in any other part of the kingdom, shall express the qua- coastwise. lity, quantity, and weight, the mark of the package, and by whom made and fold, and where configned; and if they shall be shipped without such cocquet, they shall be forfeited, and seized, together with the package. 23 G.

2. 6.21. 1. 29.

22. No candles shall be imported, otherwise than in Exportation and fome package, containing at least 224 lb. of neat candles, importation. and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the mafter of the vessel shall forfeit 50 l. 23 G. 2. c. 21. f. 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the candles were put on board by any mariner without the master's knowledge, the master may apply fuch mariner's wages, in payment of the for-

feiture. 26 G. 2. c. 32. f. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and feize all candles forfeited; together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. f. 28.

Candles for which the duty hath been paid, may be exported, and the duty drawn back. 8 An. c. 9. f. 24,

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But no drawback shall be allowed, on the exportation of any foreign candles imported, 23 G. 2. c. 21. s. 36.

And the officers of excise or customs may seize any candles, with the package, that shall be found in any vesse! cart, or other carriage, where they shall have good reason to believe, that the same were made in some private workhouse, or clandestinely imported without payment of duty; or that the same have been exported and relanded after payment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the

information, make it appear, that the duty hath been paid or secured, he shall forfeit 51. for every 100 lb. weight, and also the candles and package shall be forfeited. f. 30.

And if any foreign candles thall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forseited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forseit 5 l. for every hundred weight. f. 31.

And if any person shall knowingly harbour or conceal any candles unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, sorfeit 50 l. for every hundred weight, together with the candles and package.

f. 32.

And where any such candles shall be seized as sorfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in London, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the Royal Exchange, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon, shall not be liable to any appeal, or to be removed by certiorari. s. 33.

Power of the .

23. All the said fines, forseitures, and penalties, may be recovered and mitigated as by the laws of excise, or in the courts at Westminster; and distributed half to the king, and half to him that shall inform or sue. 8 An. c. 9. s. 28. 11 G. c. 30. s. 39. 24 G. 2. c. 40. s. 33.

Appeal.

24. And if the party is not satisfied with any judgment of the justices on the act of 23 G. 2. c. 21. before mentioned, he may appeal to the next quarter sessions, except in the case before mentioned where no person shall claim the goods seized. s. 37.

Mitigation.

25. And on informations on the faid act of 23 G. 2. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs and charges to be allowed. f. 38.

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26. And where candles shall be seized for nonpayment Proof to lie on of duties, or non-entry, and it shall be disputed whether the owner. fuch payment or entry was made or not, the proof shall lie on the claimer, and not on the officer. 23 G. 2.

c. 21. f. 35.

27. All candles, materials, and utenfils for making of U enfils liable to candles, in custody of any maker of candles, or person in the duties and trust for him, shall be chargeable with all duties in arrear, penalties. and subject to all penalties and forseitures, in the same manner as if the debtor or offender were the lawful owner. 8 An. c. 9. f. 19.

III. Coaches.

1. For every coach, berlin, landau, chariot, calash, with Duty on coachesi four wheels, chaife marine, chaife with four wheels, and caravan, kept by any person for his own use, or to be let out to hire; shall be paid 4 l. yearly: and for every calash, chaife, and chair with two wheels, kept by any person for his own use, or to be let out to hire; shall be paid 40 s. yearly. 20 G. 2. c. 10. f. 1.

But this shall not extend to heenfed hackney coaches, within London and Westminster and the suburbs thereof, not employed in carrying persons more than ten miles from

the faid cities. f. 11.

Nor to coaches kept for fale: But no fuch carriage shall. whilst in possession of the coachmaker or other person, be employed for his own use, or for the use of any other perfon (other than fuch whose carriage shall be then and there mending), or be let out to hire; on pain of 20 l. f. 12.

Nor to any publick stage coach, which is constantly employed in carrying passengers for hire, on certain fixed days in every week, and not let to hire by way of by-jobb, for

a day, or any longer time. f. 7.

Nor to any post chaise kept for hire by the postmaster general, or any deputy postmaster: But such post chaises shall in 30 days after letting out the same, be entred by the owners at the next office of excise; and shall (besides the king's arms) have such mark of distinction fixed thereon, as shall be appointed by the commissioners; on pain of 201. 1.8, 9.

And the commissioners shall cause a mark of distinction to be fixed on every fuch carriage, that shall be let out to hire; and if any person shall let out to hire any such carriage without fuch figure fixed thereon, or shall take off the same when fixed; he shall forfeit 20 !. 1. 10.

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Moreover, no person shall be obliged to pay the said yearly sum of 41. for more than five such carriages kept for his own use only; but if he keep the same for supplying any waiting jobb, by the day, week, month, quarter, or any other time, or to be let out to hire, he shall pay 41, for each, tho' exceeding the number of five; and every person who shall keep such carriage with two wheels, to be let out for hire, shall pay 40 s, yearly for each, tho' exceeding the number of five. $\int_{\cdot}^{\cdot} 2$.

Entry and payment of the duties. 2. Every person who shall keep such coach or other carriage, shall in 20 days after he shall begin to keep the same, and within 20 days yearly after the expiration of 12 kalendar months after the time of giving such first notice; — give notice in writing, at the chief office of excise in London (if within the bills); and elsewhere, shall give notice at the next office of excise, — of his keeping the same, and the number, and whether with sour or two wheels, and where he resides; and at the same time pay down the duties: on pain of 20 l. \(\int \). 41 5.

But if the duties are paid, and entry made, before information brought, the party shall not be prosecuted, tho

it be not strictly within the time limited. f. 15.

And the faid entry and payment shall be registred by the proper officer, and a receipt given for the duty, of which receipt the officer shall keep an indented duplicate, s. 6.

Person dying before the end of the year.

Power of the justices.

3. Where a person shall die before the end of the year, the person claiming title to the coach, may use it, as the deceased might have done.

deceased might have done, f. 16,

4. All the said rates and duties, and all forfeitures and offences, shall be determined by the commissioners of excise (or of appeals, in case of appeal), within the limits of the chief office in London; and elsewhere, by two justices near; who shall, on complaint upon oath, summon the party, and on his appearance or contempt, may examine the fact, and on proof thereof either by confession, or oath of one witness, give judgment, and issue warrants for levying penalties by distress and sale (if not redeemed in 14 days); which shall be employed (all necessary charges first deducted) half to the use of the king, and half to the informer: and for want of sufficient distress, they may imprison the party till satisfaction is made. f. 13, 14.

[But as these duties chiefly affect the nobility and perfons of distinction, it had been better if the act had been more explicit with respect to the punishment; otherwise it may not be so safe for justices of the peace, upon such vague and general words, to imprison a peer of the realm,

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or distrain the goods of a member of parliament during their fession. But if the justices will proceed, or shall be compelled by mandamus, or otherwise, so to do; they must remember withal, that by the 27 G. 2. c. 20. they may not order the diffress to be detained more than eight days, nor less than four.]

5. Persons aggrieved by the determination of the ju- Appeal.

flices, may appeal to the next quarter sessions. f. 13.

IV. Coffee, tea, and chocolate.

I. For all coffee imported, shall be paid at the custom Duty on coffee. house, in the whole, the sum of 3d. a pound. 10 G. c. 10. 1. 48, 49.

And an inland duty, to be paid by the maker or feller, of 2s. 6d. a pound. 10 G. c. 10. J. 4, 6. 5 G. 3.

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Except coffee of the growth of the British plantations in America; which shall pay only 1s, 6d. a pound, 5G. 2. c. 24. f. I.

2. No tea shall be imported, but from the place of its Duty on tea.

growth; on pain of forfeiture. 11 G. c. 30. f. 8.

And by the 18 G. 2. c. 26. Over and above the customs on importation, there shall be paid on all tea, an inland duty of 1 s. a pound, and 25 l. for every 100 l. of the gross price at which it shall be sold at the East India company's fales; which shall be paid in ready money by the proprietor to the collector, before it be taken out of the warehouse. J. 2.

In order to which, the commissioners may appoint officers to attend at the East India company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the 251. per cent. shall be ascertained; and to prevent mistakes, the faid officers may inspect the company's books.

18 G. 2. c. 26. f. 6.

And every person declared the best bidder at such sale, shall within three days after, deposit with the company or their clerk 40 s. for every tub and chest of tea, on pain of fix times the value, and fuch fale shall be void, and the same shall in 14 days after be put up again. f. 7.

3. No chocolate ready made, or cocoa paste, shall be Duty on cocoa imported, on pain of forfeiting the fame, and double va-nuts and chacositue; and also the bags, castes and other package.

lue; and also the bags, casks, and other package. 10 G.

6. 10. J. 2. as the sides on the old labored has seen

For

For cocoa nuts imported, shall be paid at the custom house in the whole, 10s. a hundred weight. 10 G. c.

10. 1. 47, 49.

And if any person shall import any cocoa nut shells or hulks, without the nuts, the officers of the cuftoms, excile, or inland duties, may feize them, with the bags, boxes, and package; and after condemnation they shall be destroyed or otherwise disposed of, as the respective commisfioners, or three of them shall appoint; and they may reward fuch officer in any fum not exceeding 20s. a hundred weight. 4 G. 2. c. 14. f. 12.

For all chocolate made or fold in Great Britain, shall be paid by the maker or feller, 2s. 3d. a pound. 10 G.

c. 10. f. 6. 32 G. 2. c. 10. f. 10.

In what quanti-

4. No coffee shall be imported otherwise than in cask, ties to be flowed. cheft, case, bag, or other package, which shall contain 112 lb. at the least, to be stowed openly in the hold; on pain of forfeiting the same, together with the package; which may be feized by any officer of the customs or 5 G. 3. c. 43. J. 34.

Officers of excise and fearch.

5. The excise officers may go on board any ships, and may go on board fearch as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paste, and seize all fuch as shall be forfeited, or shall be unshipt without entry and payment of duties, with the boxes, bags, and other package. 11 G. c. 30. f. 1.

Ships hovering n: ar the coaft.

6. By the 9 G. 2. c. 35. Where any vessel coming from foreign parts, and having fix pounds or more of tea on board, shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all fuch tea, with the chefts and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the fame may be seized and prosecuted, or the value thereof fued for by the officers. f. 22.

And by the 5 G. 3. c. 43. Where any veffel coming from foreign parts, and having on board twenty pounds of coffee, shall be found at anchor, or hovering within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting: all such coffee, together with the package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle and furniture shall

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be forfeited, provided such vessel doth not exceed the

burden of 50 tens. J. 38.

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7. The importer of any coffee, tea, or cocoa nuts, The faid goods to within 30 days after the mafter or purfer shall have or be entred and ought to have made entry at the custom house, of the burden, contents, and lading of the veilel, shall make due entry of the faid coffee, tea, or cocoa nuts, with an officer of excise to be appointed by the commissioners for that purpose; and the same, on paying or securing the duties shall be landed and put into a warehouse, to be provided at the charge of the importer, and approved of by the commissioners of the customs. 10 G. a. 10, J. 26. 5 G. 3 c. 43 J. 350 a drive one between so od flast nierad)

And if any perion shall import any coffee, tea, or cocoa nuts, without entry at the custom house, and bringing the same into the warehouse; the same shall be deemed clandeftinely run, and may be feized by any officer of the customs or inland duties; and the fame shall be forfeited with the package, together with the horfes,

carts, and carriages. 10 G. c. 10. f. 27.

And if any person shall neglect or refuse to make such entry with the officer of excise as aforesaid, or to land the fame as is above directed; all fuch coffee, tea, and cocoa nuts shall be forfeited, together with the package wherein the same shall be contained on board such vessel, belonging to fuch importer fo neglecting or refusing; which may be feized by any officer of the excise, 5 G. 3. c. 43. f. 35. Provided, that this shall not extend to any coffee or tea imported by the East India company. f. 36.

8. And the owner of the faid goods, and the officer for Owner and offithe inland duties, (who shall be appointed by the commif. eer to have each fioners of the faid duties) shall have each a lock and key; a lock and key. and the owner may in presence of the said officer, and of the warehouse keeper (to be appointed by the commisfioners of the customs) view, garble, and fort the said goods, to make them merchantable, and receive them out in the manner hereafter mentioned. 10 G. c. 10. J. 26,

commissioners

carroly hardai 9. That is to fay, As to coffee and tea in the first Taking out of place; -If they are intended to be taken out for home the warehouse confumption, the proprietor, within the bills, shall make home confumpentry with the receiver or collector in London, of so much tion. as he intends to take out of the warehouse, and pay down the duty; and elsewhere shall make entry at the next office, and pay the duties to the collector; and on producing a certificate figured by fuch collector or receiver had don't shootenew ede of gumamer of (certifying

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(certifying that he has received the duty) to the ware-house keeper, he shall deliver out so much as is mentioned in the certificate; and shall deliver a permit to accompany such coffee or tea so delivered out, which shall also be signed by an officer attending the warehouse, to prevent the seizing thereof. 10 G. c. 10. s. 26.

Taking out of the warehouse cocoa nuts to be made into chocolate. 10. And as to cocoa nuts, intended to be taken out of the warehouse, to be made into chocolate—an entry thereof shall be made by the proprietor with the receiver or collector, as a charge on him and also on the buyer; who shall certify such entry to the warehouse keeper; and on such certificate, the quantity of cocoa nuts mentioned therein shall be delivered out with a permit signed by the officer at such warehouse, to be delivered to the officer where they are intended to be carried, that the same officer may take the same into stock. 10 G. c. 10. f. 26.

Taking out of the warehouse coffee, tea, and chocolate, for exportation. 11. And as to coffee, tea, and chocolate intended for exportation;—it shall be delivered out of the warehouse, on security given that it shall be exported, and not relanded; which security shall be discharged, on a certificate under the common seal of the chief magistrate in any place heyond the seas, or under the hands and seals of two known British merchants there; that the same were there landed, or on proof by credible persons that it was taken by enemies, or perished in the seas. 10 G. c. 10. f. 26.

But by the 18 G. 2. c. 26. No drawback shall be allowed on tea exported. f. 5. Saving that it may be exported to *Ireland*, or the *British* plantations in *America*, without paying the inland duties before mentioned. 21

G. 2. c. 14.

What quantity fall be taken out at a time.

12. And no feller or dealer shall receive out of the warehouse, less than one hundred weight of each fort at one time; except where the importation and delivering in shall be in less quantities, or where the same shall be sold in lots or parcels less than a hundred weight. 10 G. c.

10. ∫. 34.

Warehouse keeper and offieer to keep an account. 13. And the warehouse keeper and officer appointed by the commissioners of the inland duties shall each of them keep a book, wherein they shall enter an account of all coffee, tea, and cocoa nuts brought into and carried out of the warehouse, and the day and time when, and how much was delivered for home consumption, and how much for exportation, and the names of those for whom it was delivered out; and shall every six weeks, or oftner if required, transmit an account thereof in writing and on oath to the respective commissioners, with an account how much is remaining in the warehouse: Which said commissioners

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commissioners shall in one month appoint a person to inspect the books and warehouses, and examine the accounts; and if it shall appear that any was otherwise delivered out, or before payment of the duties on fuch coffee and tea as were fold for home confumption, or giving fecurity for what was delivered for exportation, the warehouse keeper and officer respectively offending shall forfeit 1001. and be disabled to hold any publick office. 10 G. c. 10. 1. 29.

14. Every person who shall keep a publick house, shop, Who shall be cellar, or other warehouse, for felling of brandy or other deemed a dealer in coffee, tea, spirituous liquors, and shall have in his custody any cof- and chocolate. fee, tea, chocolate, or cocoa nuts above fix pounds weight, shall be deemed a dealer in the said commodities.

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15. No person shall be permitted to sell or retail any Licence for recoffee, chocolate, sherbet, or tea, without licence first had tailing. by order of the general sessions of the peace in the respective counties (certificate being first shewed, that he hath given good fecurity for payment of the duties to the king); or from the chief magistrate of the place in whose jurisdiction he shall inhabit. And no licence shall be granted to any retailer, till fuch fecurity shall be given by recognizance or otherwise: For which licence, recognizance, and fecurity, 12d. shall be given, and no more, for the payment of the excise. And persons selling without such licence and security, shall forfeit 51. a month. 15 C. 2. c, 11. J. 15.

16. Every druggift, grocer, chandler, coffee-house Houses of manukeeper, chocolate-house keeper, and other person selling facturing and or dealing in coffee, tea, and cocoa nuts, or making or felling chocolate, either by wholefale or retail, shall before he take any the faid goods into his possession make entry in writing of all storehouses, shops, rooms, and other places intended to be used by him, at the office for the division; on pain of forfeiting 200 l. and the said goods found therein, with the caniffers, bags, veffels, and other package. 10 G. c. 10. f. 10.

And no entry of any shop, warehouse, room, or utenfil for carrying on any trades aforefaid, shall be deemed a legal entry, unless made in the name of the real owner of, and trader in such shop; and the person who acts as visible owner of fuch place, or principal manager in fuch trade, shall be deemed the real owner and trader, and confequently liable for any flock found there, or for not making entries, or other offences. 18 G. 2. c. 26. f. 8.

And

And none of the faid goods shall be offered to sale but in places entred, or in a warehouse to be approved of by the commissioners; on pain of forseiting the same and treble value, together with the canisters, bags, and other package. 10 G. c. 10. s. 14.

Notice of bringing in.

17. No coffee, tea, cocoa nuts, or chocolate shall be brought into any such shop or other place, without sirst giving notice thereof to the officer of the division, and leaving with him a certificate signed by the officer of the division from whence they were brought, that the duties on such coffee, tea, and chocolate have been paid, or that they have been condemned as forseited; and in case of bringing in of cocoa nuts, that they have been entred with the officers of the customs, or were condemned as forseited; and expressing the quantity and quality and where the duties were paid, or at what port the customs and duties were paid for the cocoa nuts, or were condemned; on pain of forseiting the same and treble value, with the canisters, bags, and other package. 10 G.

Permit when fold to the retailer.

18. And where any of them shall be sold in the said entred places, above the weight of 6 lb. the officer shall, on request of the seller, give to the buyer a certificate signed by him, expressing the quantity, and the names of the buyer and seller, and that the duties have been paid, or that the cocoa nuts have been entred with the officers of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof. 10 G. c. 10.

Officers to enter

19. The officers shall be permitted at all times by day, to enter all warehouses, shops, and other places, and by weighing, gaging, or otherwise, to take an account of the quantity and sorts; in the weighing whereof the owner shall be assisting, and keep just weights and scales; on pain of 1001. 10 G. c. 10. s. 12.

Search for goods concealed,

20. And if any officer shall have cause to suspect, that any the said goods shall be concealed, if it is within the bills, then on oath made before two commissioners, or elsewhere, before one or more justices, setting forth the ground of his suspicion, they may by warrant authorize such officer by day or night, but if in the night then in presence of a constable, to enter the place suspected, and seize and carry away the same (if sound) as forseited, together with the bags, canisters, and other package; and if

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pai f. any person shall obstruct such officer, he shall forfeit 1001.

And if any seller or dealer shall conceal any the said goods, he shall forfeit the same and treble value, with the canisters, bags, and other package; and if any person shall obstruct the officer in seizing any of the said goods by virtue of this or any suture act, or after seizure shall endeavour to rescue the same, or break or damage the vessels or package; he shall forseit 501. s. 39, 40.

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And if by the 11 G. c. 30. Two commissioners or any justice of peace, on complaint by an officer on oath, that he suspects any dealer not to have made true entries, fetting forth in such oath the causes of his suspicion, may summon such suspected person to appear with his books, and examine him on oath touching the truth of his entry; and if he shall resuse or neglect to appear, or to make such oath, he shall forfeit 201. s. 12.

21. No person shall mix with coffee, to increase the True manufacturing of turing of coffee, weight, any butter, grease, water or other materials; on turing of coffee, pain of 1001. and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 1001. 11 G. c. 30. s.

And the commissioners may appoint houses and proper materials for roasting of coffee berries, and officers to attend them, and one person at each house well skilled in roasting of coffee; to which all persons may resort to have their coffee berries roasted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forseited; for the roasting of which coffee shall be paid 8 s. a hundred weight. 10 G. c. 10. s. 31.

But the fellers and dealers may if they think proper, fend their own roasters; who shall be permitted to roast the same, paying 3s. a hundred weight. 10 G. c. 10.

And during the continuance of such roasting houses, no coffee berries shall be roasted burned, or dried, but in one such house; on pain of forfeiting the same, and 5s. a pound. 10 G. c. 10. s. 33.

And if any officer or roafter shall neglect or refuse to attend such house, he shall forfeit 101. for the first offence, and 201. for the second, and be incapable to hold any office in the revenue. 10 G. c. 10. J. 34.

22. No dealer in tea, or manufacturer, or dyer thereof, True manufactures that adulterate, it, or alter, or manufacture it with any turing of tea, drug, or mix it with any leaf or other ingredient; on pain of forfeiting the same, and rool. 11 G. 2. 30.

And

And by the 4 G. 2. c. 14. If any dealer in tea shall dye, or manufacture, any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea, or shall mix or colour such leaves of tea, with terra japanica, sugar, molosses, clay, logwood, or any other ingredients; or shall offer to sale, or have in his custody any such leaves in imitation of tea, or any such stained leaves of tea mixed with any ingredient; he shall forseit for every pound weight thereof so l. s.

True manufacturing and flamping of chocolate. 23. The maker of chocolate, if within the bills, shall weekly, and elsewhere every fix weeks, make entry in writing at the next office, of all chocolate made by him within that time, setting forth the weight thereof, on pain of 501. Which entry shall be upon oath of the maker or his chief workman, according to the best of his knowledge and belief, to be administred within the bills by such officers as the commissioners shall appoint, and elsewhere by the collectors and supervisors. But no perfon shall be obliged to go further to make entry, than the next market town. 10 G. c. 10. s. 17.

And he shall in one week within the bills, and elsewhere in fix weeks after entry, clear off the duties, on pain of 501. besides the duty; and he shall after default in payment, sell or deliver none out till the duty is paid, on pain of treble value. 10 G. c. 10.

f. 18.

And he shall at the time and place of entry produce the same so made (on pain of 20 s. for every pound not produced); which chocolate shall be tied up with thread in papers of one pound, half a pound, or a quarter of a pound each, and not more or less; which shall be marked or stamped by the officers. 32 G. 2. c. 10. s. 16.

And if any person shall sell chocolate in any less quantity than a quarter of a pound; or shall sell and deliver any chocolate not being duly marked or stamped; or not inclosed and tied up with the identical piece of thread directed to be used in tying up the same before it was stamped; or shall sell and deliver any chocolate, whereof the thread or stamped label inclosing the same shall have been broken or opened; he shall forfeit 201. s. 17.

And if any person shall counterfeit the said stamp, or shall knowingly sell any chocolate with a counterfeit stamp; or shall, on chocolate, for which no entry hath been made, nor the duties paid, fix any paper with the stamp on; he shall sorfeit 5001. and be committed to the

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11 G. c. 30. J. 13.

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And if any stamped chocolate shall be damaged, the owner may in presence of an officer open it, and deliver the stamps to the officer, and work it over again with fresh cocoa nuts, and have it restamped, paying duty for what is added. 11 G. c. 30. f. 14.

But on reworking chocolate, proof shall be made (before the commissioners within the bills, and before two justices elsewhere) that the duties for the cocoa nuts whereof it was made, and for those also which are added, have been paid, and the chocolate entred. 11 G.

c. 30. f. 15.

24. If any person shall be minded to make chocolate Chocolate made for his own family, and not for fale, and shall give no- for private famitice thereof under his hand to the officer of the division, three days before he begin to make, in which notice shall be specified the quantity of cocoa nuts designed to be made into chocolate, the name of the person to be employed in the making, and the place where; in fuch case the officer shall give a permission under his hand for making the same, and the place shall not be liable in respect thereof to be surveyed. 10 G. c. 10. J. 23.

And the person for whom it is made, shall in three days after finishing, make entry on oath with the officer, of the whole quantity then made by virtue of fuch permit, and bring the fame wrapt up as before, to have it stamped, and shall pay the duty; and in default thereof, shall forfeit the same, and treble value.

1. 24.

And no person shall be permitted to make into chocolate for his own private use, less than half a hundred

weight of cocoa nuts at a time. J. 25.

25. And if any person shall offer any tea to sale, not Penalty of rehaving a permit; or if any pedlar, or other trading per-without a perfon, going from town to town, or other mens houses, and mit, or pedlage trading either on foot, or with any horse or other cattle, with one. or otherwise, shall offer any such tea to sale, altho' he have a permit; the person to whom it is offered to sale, may seize and detain the same and carry it to the next warehouse belonging to the customs or excise, and bring the person before a justice of the peace to be by him committed to prison, and prosecuted for the penalties incurred for fuch offence; and fuch tea may be profecuted in the name of the person who stopped or seized the same,

in like manner as if it had been feized by an officen

9 G. 2. c. 35. f. 20.

And none of the faid goods above fix pounds weight, shall be removed or carried from one part of the kingdom to another, without a permit figned by an officer, fignifying the names and places of abode of the buyer and seller, and the quantity and species of the goods, and that the duty hath been paid, or the cocoa nuts entred as aforesaid, or that they have been condemned as forfeited; on pain of forfeiting the same, together with the canisters, bags, or other package: Which permit shall be left with the officer of the division to which the same shall be carried, to prevent the seizure thereof; in which permit shall be expressed the time for which it shall continue in force.

And if any person shall take out a permit for removing coffee, tea, or cocoa nuts, and shall not send away the goods within the time limited, nor return the permit, he shall forfeit treble value; and if there shall not appear a sufficient decrease made in the stock to answer the quantity in the permit, the officer may seize so much of the said stock as someited, as will answer the said quantity in the permit: But no person shall receive a permit, without the direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50 hand in default of payment, he shall be imprisoned three

months. II G. c. 30. f. 10.

Account to be kept of small quantities contumed.

26. All fellers and dealers in any the faid goods, and all makers of chocolate, and coffee or chocolate house keepers, who shall confume the same in small quantities under fix pounds, shall keep an account of all coffee, tea, chocolate, and cocoa nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them under fix pounds; and shall keep another book, wherein they shall enter each parcel above fix pounds, which they shall sell in each day, which shall not be removed without a permit from the officer, expressing the quantity and quality, and the name of the feller and buyer, and where it is to be carried, and that the duties were paid, or the cocoa nuts entred, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to fuch fellers and dealers; and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the faid book shall from time to time lie open, and be perused by the officer: And if such

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feller or dealer shall omit his duty in regard to the faid books, he shall forfeit 100 l. 10 G. c. 10. f. 35.

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But by the 12 G. c. 28. No dealer in cocoa nuts shall dispose of less than 28 pounds at a time, and then shall enter in writing the name and place of abode of the person to whom fold, and on demand shall produce such account to the officer; on pain of 201. for each pound of cocoa nuts otherwise disposed of, and of 20 l. for default about

the entry. 1. 29.
27. All the faid penalties and forfeitures shall be reco-Power of the vered and mitigated as by the laws of excise or in the justices. courts at Westminster; and be employed half to the use of the king, and half to the informer. 10 G. c. 10. f. 41. 11 G. c. 30. f. 39. 4 G. 2. c. 14. f. 10. 18 G. 2. c. 26.

f. 14. 24 G. 2. c. 40. f. 33.

And by the 12 G. c. 28. the penalties on the faid act shall be recovered as by the laws of the customs or excise respectively. J. 33.

28. And on disputes whether the duties have been paid, Proof to lie on the proof shall lie on the claimer, and not on the officer, the claimer.

10 G. c. 10. f. 28. 29. The commissioners shall cause all tea and coffee Condemnation seized in London, and condemned, to be fold there; and if and sale. feized elsewhere, they shall cause it after condemnation to be brought and fold in London. 12 G. c. 28. f. 1. Or, after having been first valued by sworn valuers, they may be fold where the commissioners shall think proper. J. 16.

But if they think fit, they may cause such tea as cannot be fold for 5 s. a pound, to be burnt or otherwise destroyed; and the person making seizure, to be rewarded as they shall think proper, not exceeding 1 s. 6 d. for each pound of such tea. J. 3.

30. But no officer of the customs, or other person, Reward. shall be intitled to any reward for any seizure of the said goods, unless he give notice of the seizure to the next officer of excise, or supervisor, in 48 hours; who shall, on fuch notice, take an account of the species and quantity; nor shall such goods be removed without a permit from fuch officer of excise, on pain of reseizure. 12 G. c. 28.

31. All stock and utenfils found in the shops or other Utenfile liable. places aforefaid, shall be liable to the duties and forfeitures. 18 G. 2. c. 126. f. 8. . Hil all million visve . 7

next excile effect, of the quantities of the meret, is used as and only on Valla. T. T. T. Vol. 1.

where, once in fix weeks, make entry in writing at the

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Duty on importation.

1. By the 19 G. 2. t. 12. Certain additional duties are laid upon glass imported, over and above what it shall pay by the 2 W. Seff. 2. c. 4. and by the book of rates of the 12 C. 2. which shall be under the management of the com-

missioners of the customs. f. 2, 8.

Inland duty.

2. Moreover, there shall be paid a duty of qs. 4d. a hundred weight upon all materials, metal, or other preparation for making of crown, plate, and flint glass, and all white glass; and of 2s. 4d. a hundred weight, upon all materials for making common bottles, and all other green glass: To be paid by the maker; and to be under the management of the commissioners of excise. f. 4, 5, 6, 9.

Place of making to be entred.

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3. In order whereunto, every maker of glass shall first make entry in writing at the next excise office, of his name, and of all his furnaces, pots, pot chambers, warehouses, rooms, and other places for making or keeping of glass, or of materials for making it; and if he shall use the same, without first giving notice to the proper officer, he shall forfeit 501. f. 10.
4. And he shall, before he begin to fill any pot, give

Notice of beginning to work,

12 hours notice in writing to the officer, of the time and hour when he intends to begin, with an account of the weight of the materials, and the species of glass to be made; on pain of 501. f. 11.

And if the filling be not begun purfuant to fuch notice,

the faid notice shall be void. f. 12.

Officer to eater and furvey.

5. The officer shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making of glass; and to weigh and take account of the quantity of materials; and fhall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand, for the glass maker; and if he shall not leave such copy on demand.

he shall forfeit 40 s. f. 13.

And if any person shall obstruct any officer in the execution of his duty on this act, he shall forfeit 501. f. 16.

6. And the maker shall keep scales and weights at the place where the glass is made, and affift the officer in weighing; on pain of 501. f. 14.

7. Every maker within the bills shall monthly, and elsewhere, once in fix weeks, make entry in writing at the next excise office, of the quantities of the materials used in each making, on pain of 201. which entries shall be made

Maker to keep fcales and weights.

Entry of glafs

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paid a d Britain, by the and put ment of on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. f. 17.

But no maker shall be obliged to go further than the market town where it is made, or the next market town, for the making fuch entries. J. 18.

8. The maker, within the bills, shall in four weeks, Payment of the and elsewhere in fix weeks after entry, pay off the du-duty.

ties; on pain of double duty. f. 19.

g. If any pot filled with materials shall crack or break, Allowance for whereby any part thereof shall become unfit for service, on glass spoiled in proof thereof to the commissioners where such glass house making. shall be fituated, they shall make an allowance for the fame. /. 15.

10. Any person who hath paid the duty may export Exportation the glass, and have the duty drawn back; and if it shall be relanded, it shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation. f. 20, 21, 22.

And no glass shall be imported into Ireland, other than the manufacture of Great Britain; on pain of forfeiting the fame, and the ship and 10s. a pound. f. 23.

The like penalty for exporting glass out of Ireland.

II. The penalties to be recovered or mitigated as by the Power of the laws of excise, or in the courts at Westminster; and to be justices. employed, half to the use of the king, and half to him that shall fue. J. 39.

VI. Hops.

1. By the o An. c. 12. an additional duty of 3d. a Duty on hope pound is laid on all hops imported, over and above all other imported. duties; which shall be under the management of the officers of the customs. J. 1, 2, 3, 4.

And if any foreign hops shall be landed before entry and duty paid, or without warrant for landing; the same shall be forfeited, and burnt in ten days after condemnation, and the thip also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 51. 2 hundred weight. 7 G. 2. c. 19. f. 1.

2. And by the faid act of the o An. c. 12. there shall be Duty on hope paid a duty of 1 d. for every pound of hops grown in Great Britain, cured and made fit for use; the same to be said Britain, Britain, cured and made fit for use; the same to be paid by the owner within fix months after they shall be cured and put into bags; which duty shall be under the management of the commissioners and officers of excise. J. 1, 5.

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Hop grounds to be entred.

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3. In order whereunto, every person who shall plant or have growing any hops, for fale or not for fale, shall yearly on or before Aug. 1. give or fend notice in writing under his hand, at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish, township, or place, and the name of the owner or occupier; on pain of 40 s. an acre. 9 An. c. 12. f. 6.

But fuch person shall not be obliged, for giving notice,

to go further than the next market town. f. 7.

And the officer who shall receive the notice, shall in five days enter the same in a book to be kept at the office for

that purpose; on pain of 40s. f. 7.

Places of curing and keeping to be entred.

4. Also no person shall use any oust, storehouse, or other place, or any kiln for curing or keeping of hops, unless notice thereof shall have been given, on pain of 501. 9 An. c. 12. f. 8.

And all hops shall in fix weeks after gathering, be brought to be cured and bagged at fuch oufts or places notified, and no other; on pain of 5 s. a pound. f. g.

Officer to enter and furvey.

5. The officer shall at all times, by day or night, and if in the night in the presence of a constable, be permitted on his request to enter into the oust, storehouse, or other place, used by any person for growing, curing, or keeping of hops; and if the planter or owner thall obstruct him,

he shall forfeit 201. 9 An. c. 12. 1. 15.

and weighing.

Buch on And

Notice of bagging 6. The owners of hops, before they respectively begin to bag or weigh their hops, shall fend notices in writing under their hands to the next excise office or officer, of the day and hour when they intend to begin either to bag or to weigh; which notice, as to fuch as shall be bagged or weighed the first week, shall be given in 24 hours before; and as to every other bagging or weighing, 48 hours; on

pain of 50 l. 6 G. c. 21. J. 25.

Officer to attend at the bagging and weighing.

faction of care

7. And the excise officer shall attend at the bagging of every parcel of hops, and at the weighing thereof, and shall cause the weight (the tare of the bag being abated) to be marked on every bag; and shall cause an entry of the faid weight to be made in his book; and shall make return thereof in writing to the commissioners or whom they shall appoint, leaving a true copy (if demanded) of such return under his hand with the planter or owner; and if he shall neglect or refuse to leave such copy (after demand in writing, 12 G. c. 28. f. 30.) he shall forfeit 5 l. 9 An. c. 12. f. 11. tolk duidw ; which drai tog be

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Curting hep-

And the allowance shall be made after the rate of ten pounds per centum, upon the weight of every bag, for the tare thereof. J. 13.

8. The owners shall keep at their ousts, storehouses, Owner to keep and places of keeping their hops, weights and scales; and weights. permit the officer to use them; and shall not suffer any false weights to be used; on pain of 201. 6G. c. 21.

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9. The owners may, if they think fit, put the hops Hops may be put into casks, instead of bags; giving the like notice, and be- into casks instead ing subject to the same regulations, for casking as for bagging. 6 G. c. 21. f. 27, 28.

And the officer shall cause the cask to be weighed, and the weight to be marked on the cask, and also the weight

of the hops therein. f. 28.

10. No person shall take any hops of foreign growth Deceit in bag- a out of the bags in which they are imported, and rebag the ging. fame in British bagging, in order to fell or export them as British hops; on pain of 10 l. a hundred weight: And if any person shall endeavour to defraud the king of the duty, by using twice or oftner the same bag, with the officer's mark thereupon; he shall forfeit 40 l. 9 An. c. 12. 1. 23.

11. No planter or owner shall (on pain of 50 l.) re- Removal before move from his ouft, storehouse, or other place, any hops, bagging. until they have been cured, bagged, and weighed, and the duties afcertained; unless where the officer after notice, shall not attend the bagging and weighing. 9 An.

10. 12. /. 16.

12. If any planter or owner shall conceal any hops, to Concealing. avoid the duties; he shall forfeit 20 l. and the hops con-

cealed, 9 An. c. 12. J. 17.

13. And if any gatherer of hops, or other person, shall Privately conprivately convey any hops from the place of growing, or veying. where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he shall forfeit 5 s. a pound. 9 An. c. 12. f. 18.

14. The planter or owner shall in fix months after the Payment of the hops shall be cured, bagged, or weighed, pay off the du-duties.

ties; on pain of double duty. 9 An. c. 12. f. 14.

15. If any person shall mix with hops any drug or in-Adulterating gredient to alter the colour or scent; he shall forfeit 5 l. a hops.

hundred weight. 7 G. 2. c. 19. f. 2.

16. No common brewer, innkeeper, or victualler shall Using other use any broom, wormwood, or any other bitter ingredient, things inflead of to serve instead of hops: on pain of and (Freeset the in to ferve instead of hops; on pain of 201. (Except the infuling of broom or wormwood into beer or ale by the re-E 3

And

Excise: (Hops.)

Exportation:

tailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) 9 An. c. 12. f. 24.

17. Hops which have paid the duty, may be exported

to Ireland. 9 An. c. 12, f. 21.

But there shall be no drawback of the duties. 6G.

And no foreign hops, other than of British growth,

shall be landed in Ireland. 7 G. 2. c. 19. f. 2.

Penalties how to be recovered.

18. The penalties aforefaid shall be recovered and mitigated as by the laws of excise, and distributed half to the king, and half to him that shall sue, 9 An. c. 12. f. 26. 24 G. 2. 1. 40. J. 33.

Hops liable to diffress for the duties and penalties.

19. And all hops in the cuftody of any planter or owner, or person in trust for him, shall be liable to the duties in arrear, and to the penalties; in the fame manner as if the debtor or offender were the lawful owner, o An.

Cutting hopbinds.

c. 12. f. 19.
20. If any person shall unlawfully and maliciously cut any hop binds growing on poles, in any plantation of hops; he shall be guilty of felony, without benefit of clergy. 6 G. 2. c. 37. f. 5, 6.

Which offence is treated of more at large in the title

Black act.

VII. Leather.

Duty on leather imported.

1. By the 4 W. c. 5. and 9 An. c. 11. and 10 An. c. 26. certain additional duties are laid on all hides, Kins. vellum, and parchment imported, over and above what they are charged in the book of rates: which shall be under the management of the commissioners of the customs.

And after the duty shall be paid on importation, the officers of the customs shall cause every hide or skin to be marked, to denote the payment of the duty. 9 An. c. II.

. 6.

Duty on leather dreffed in Great Britain.

2. And by the faid acts of o An. c. II. and to An. c. 26. certain duties are imposed on hides and skins, tanned, tawed, or dreffed in Great Britain; and on vellum and parchment made in Great Britain; as follows:

On all tanned hides 1 d. a pound,

Calf, kips, hogs, and dog skins tanned 11 d. a pound. Goat skins tanned with shomack, or otherwise, to fefemble Spanish leather, 4d. a pound.

Sheep skins tanned for roans after the nature of Spanish

leather, 2 d. a pound,

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Excife: (Leather.)

Sheep skins and lamb skins tanned for glovers and bazils rid. a pound.

Tanned skins not before charged 30 l. in the hundred,

according to the real value.

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All the above to be paid by the tanner.

Horse hides dressed in allow and falt or meal, or otherwife tawed, 1s. 6d. a hide.

Hides of steers, cows, and all other (except horse hides) dreffed in allom and falt, or meal, or otherwise tawed, 3 s.

Calve skins and kips dreffed in allom and falt or meal, or

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otherwise tawed, 11d. a pound.

Slinks so dressed or tawed, with the hair on, 3s, 2 dozen.

Slinks so dressed or tawed, without hair, 1s. a dozen.

Dog fkins so dressed or tawed, 1 s. 2 dozen.

Buck and doe fkins (except what paid the duty on importation) dreffed in allom and falt or meal, or otherwise tawed, 6 d. a pound.

Kid skins so dressed or tawed (except what paid the duty

on importation) 1 s. a dozen.

Goat skins so dressed or tawed, 2s. a dozen,

Beaver skins so tawed, 2 s., a dozen.

Sheep skins and lamb skins so dressed or tawed, 11d. a pound, and no more, altho' they may have been dipped or steeped in the tanner's wooze made of bark or shomack before such dressing (3 G. r. 4. f. 13.)

All other tawed skins not before charged, 30 l. for every

A. Lanners, t

100 l. value.

To be paid by the tawers or makers.

For hides and skins dressed in oil, 6 d. a pound. Deer, goat, and beavers skins, dressed in oil, 6d. a pound.

Calves skins dressed in oil, 8d. a pound.

Sheep and lamb skins dressed in oil, 3 d. a pound. All skins dressed in oil, not before charged, 151. in the hundred, according to the real value.

To be paid by the oil leather dreffers.

For all vellum made in Great Britain, 3s. a dozen. Parchment made in Great Britain, 1 s. 6 d. a dozen.

But fuch small pieces as have been commonly called pates and tails, and are tanned after they are cut off from the hides. hides, shall not be charged with the duty by weight, but with the duty ad valorem; and the same need not to be

What is meant dreffed in oil, and tawed.

marked as is hereafter directed. 9 An. c. 11. f. 46.
3. By tanned hides or skins, or pieces thereof, are by hides tanned, meant only such as are tanned in wooze made of the bark of trees or shomack; and by hides and skins dressed in oil, are meant fuch as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by tawed hides or skins, are meant such as are dressed or made into leather in allom and falt, or meal, or other ingredients properly used by the tawers of white leather. 9 Ann. c. 11. J. 3.

Who shall be deemed tawers or dreffers;

4. Collar makers, glovers, bridle cutters, and others who dress fkins or hides, or pieces thereof, in oil, allom and falt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dreffers. 9 An. c. 11. J. 28.

Duty ad valorem 5. The value of the faid hides and skins which are to how to be after- pay ad valorem, shall be as they are worth to be fold at the next market, without respect to the duty; and the collector shall receive the duties, on the oath of such tanner, tawer, or dreffer. 9 Apn. t. 11. J. 14. (nottstogmin)

No leather to be twice charged.

6. Any hide or fkin which hath once paid the duty, shall not be charged under any other denomination: 9 Ann.

Officers for these 7. The commissioners of the treasury shall appoint commissioners of these duties; who shall have the same power as the commissioners of the excise. 9 Ann. c. 11. f. 13, 38. 2. Parties of long and hours feeling in 8. Tanners, tawers, curriers, or dreffers of hides or

Places of work-

ing to be entred. Ikins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make yellum or parchment, before they use the same; on pain of 50l. 9 An. c. 11. f. 15.

And if any person shall not make such entry, or shall use any private tan yard, workhouse, pit, fat, mill, or place, he shall forfeit 20 l. and the goods found in such private tan yard or place not entred, or the value thereof,

shall also be forseited. 9 An. c. 11. f. 17.

Officers to enter and furvey.

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9. The officers at all feafonable times, in the day time, may enter into any tan yard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 101. 9 An. c. 11. f. 17.

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10. The faid tanners and others shall give notice to the Notice of rem officer, of their places for drying and keeping of hides or ving to the place skins, vellum or parchment; and they shall give two days notice in writing to the officer, before they take the faid goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they shall permit the officers to take an account; and shall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the faid goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administred by any justice of the peace, or collector or fupervisor; and they shall not remove any of the said goods, from the place of drying, until the duty be first charged, entred, and marked. 9 An. c. 11. f. 16.

And if any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the faid goods contrary to this act; he shall forfeit 201, and also such goods unlawfully removed, or the value thereof shall be forfeited.

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11. And if any tanner or other fuch person shall con- Concealing to ceal any hide or fkin, vellum or parchment, or any part avoid the duty. thereof; he shall forfeit 20 l. and also the goods concealed, or the value thereof, 9 An. c. 11. f. 17.

12. Tanners, and other the faid persons, shall keep Tanners to keep fcales and weights; and fworn officers shall be appointed, scales and for the weighing and other matters to be performed at eve- weights.

ry fuch yard or dreffing place. 9 An. c. 11. f. 18.

And if he shall not keep just scales and weights, or shall not permit his hides or fkins to be weighed, or neglect or refuse to bring the scales, or to affist at the weighing; he

shall forfeit 50 l. f. 26.

13. Tanners, and other the faid persons, shall before Duty to be aforany the faid goods be removed from the place of dreffing, tained before drying, or keeping, give two days notice in writing or removal. drying, or keeping, give two days notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market town); and shall permit the officer to weigh the goods chargeable by weight, and bring the scales, and affift in weighing; and shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall ascertain the value of such goods as are to be charged ad valorem, by his oath to be taken before the faid officer, or a justice of the peace. 9 An. c. 11. s. 19.

Charge by the

14. And after the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners or whom they shall appoint, leaving a true copy thereof under his hand, with fuch tanner or other person. o An. c. II. /. 20.

Leather to be marked,

15. Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or fkin, and every piece of a hide or fkin, and all vellum and parchment, to be marked. 9 An. c. 11. f. 21.

In what part to be marked.

16. And if such tanner or other person shall desire the mark to be made, on any particular part of the hide or fkin; the officer shall mark it accordingly. 9 An. c. 11.

Removing before marked.

17. And if any tanner or other fuch person, shall remove from his yard or drying place any the faid goods, before the duties shall be charged, and before they be marked; or if any buyer shall carry away the same before they be marked; he shall forfeit 50 l. and the said goods fo unlawfully fold or removed, shall also be forfeited. 9 An. c. 11. f. 26.

Counterfeiting the stamp.

18. And if any person shall counterfeit the stamp, or knowingly fell any the faid goods with a counterfeit stamp; he shall be guilty of felony without benefit of clergy. 9 An. c. 11. J. 44.

Leather stamped to be kept feparate.

19. And to prevent frauds between the officers and tradefmen, all tanners, tawers, and dreffers of hides, fkins, vellum, and parchment, shall keep those which have not been stamped, from those which have, and also those which have been last stamped, from those which have been stamped before, for 24 hours within the bills, and for two days elsewhere; unless they shall have sooner been weighed and taken account of by the furveyor or fupervifor: on pain of 10 l. 5 G. c. 2. f. 10.

And not to be

20. And they shall not remove the same for 24 hour removed till after from the stamping thereof, unless the same shall sooner have been weighed by the supervisor or surveyor, that so they may have an opportunity to re-weigh the same after the inferior officers: And if additional weight shall be found; the said hides, or skins, and pieces thereof, shall be charged accordingly. And if fuch tanner, tawer, or dreffer shall remove, or cause or suffer the same to be removed contrary hereunto; he shall forfeit 201. 5 G. 3 6. 43, 7. 21.

And he shall keep scales and weights for such re-weight ing; and bring the hides and fkins and pieces thereof to

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the scales; and affist the surveyor and supervisor in reweighing, and in examining from time to time the depending stock of such tanner, tawer, or dresser; on pain of 501. f. 22.

21. Persons within the bills of mortality shall pay off Payment of the the duties in 14 days to the commissioners, and elsewhere duties. in six weeks to the collectors, after the said goods shall be

marked. 9 An. c. 11. f. 23.

But no person shall be obliged, for payment of the duties, to go farther than the next market town. f. 24.

And persons not paying as aforesaid shall forseit double duty; and shall not deliver out any of the said goods until the duty be paid, on pain of double value. f. 25.

22. Every tanner, and other such person, shall once Tanners to be in three months (if demanded) make an account with the lance accounts officer, of the goods taken out of the wooze or other in-with the officers. gredients, and of his entries thereof, and balance the said account by the goods which have been charged, and those which are in his possession unmarked and uncharged; on pain of 50 l. 9 An. c. 11. se 27.

23. On exportation of hides or skins, tanned, tawed, Exportation or dressed, and marked, and of boots, shoes, gloves, or other manufactures made of leather, chargeable for the duty by weight; a drawback shall be allowed of two thirds of the duty. 9 An. c. 11. f. 39. 12 An. st. 2.

c. 9. S. 65.

Except that for tanned leather manufactured into boots, shoes, gloves, and other wares; a drawback of 1 \(\frac{1}{2}\) d. for a pound weight, shall be allowed in lieu of the faid two

thirds of the duty. 12 An. fl. 2. c. 9, f. 64.

24. Any two justices residing near, may hear and de-Penalties how termine offences; who shall on information or complaint recoverable, in three months after seizure made, or offence committed, summon the party accused, and the witnesses, and on appearance or contempt of the party (on proof of notice given) shall examine witnesses on oath, and give judgment, and issue warrants for levying the pecuniary penalties by distress and sale (if not redeemed in six days).

of the officers being always allowed over and above the mitigation; and so as the mitigation do not reduce the penalties to less than one fourth part, over and above the

charges. 9 An. c. 11. f. 37.

26. Persons aggrieved may appeal to the next sessions, Appeal, who may determine the same, and issue warrants for levying the penalties. 9 An. c. 11. s. 36.

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Certiorari.

27. And no certiorari shall be allowed. 9 An. c. 11. -f. 47! sand of want from gandance nichal griffier reading flook of facil tauner, tawer, or englier; on pain

VIII. Linen cloth, and filks. 21. Perfors within the bills of mortality finall particle to ment of the

Duty on impor- 1. By the 10 An. c. 19. and the 12 An. ft. 2. c. 9. There shall be paid for all chequered and striped linens, and upon all linens printed, painted, stained, or dyed, after the manufacture, or in the thread or yarn, in any foreign parts, which shall be imported, and may lawfully be worn, over and above other duties, 301. for every 1001. value; which shall be under the management of the commissioners of the customs, o man no bear at your and an

Except lawns, striped or chequered linens, being all white, and neckcloths striped at the end only, and also barras, or packing canvas, and buckrams. 12 An. ft. 2. c. 9. f. 5. 12 An. ft. 2. c. 19. and to be continued

> And after the duty is paid, the faid printed linens imported shall be stamped by the officers of the customs.

Hame duties.

2. By the 10 An. c. 19. and the 12 An. ft. 2. c. 9. Over and above the duties payable on importation of any of them, there shall be paid, for all filks printed, stained, or painted in Great Britain, (filk handkerchiefs excepted 12d. a yard in length, reckoning half a yard for the breadth.

And for all filk handkerchiefs so printed, stained, of painted in Great Britain; 4 d. a yard square.

And for all callicoes printed, stained, painted, or dye in Great Britain, 6d. for every yard in length, reckoning one yard wide, or within one eighth thereof. A. ...

And for all linen stuffs printed, stained, painted, a dyed in Great Britain, 3 d. a yard in length, reckoning yard wide.

Except fuch callicoes, linens, and fuftians as shall dyed throughout of one colour only, and ftuffs made woollen, or whereof the greatest part in value shall b by diffrets and rate (at the

Observation as to callicoes.

3. But it is to be observed, that such painted or stains callicoes cannot be of use for wearing apparel, and then fore the printing or staining of them must be chiefly order for exportation; for by the 7 G. A. I. c. 7. it is et acted, that no person shall use or wear in any apparel, a printed, painted, stained, or dyed callico; on pain of 5 to the informer, on conviction on the oath of one witne before one justice; who shall, on information on oath

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fix days after the offence, fummon the party, and upon his appearance or contempt examine the matter, and on proof by confession, or oath of one witness determine the fame, and on conviction cause the penalty to be levied by diffress and sale, rendring the overplus (charges of diffress and fale being first deducted): Provided that persons aggrieved may appeal to the next quarter fessions, giving fix days notice. J. 1.

And if any person shall offer the same to sale, or any houshold furniture made up of or mixed therewith, unless for exportation; he shall forfeit 20 l. half to the informer, and half to the poor of the parish or place where the offence shall be committed, to be recovered in the courts at Westminster, with full costs, on prosecution in fix months; and if he is a steward or other officer of a corporation, he shall also forfeit his office. f. 2, 4.

And no person shall use the same in any houshold furniture, on like pain of 201. f. 3.

But this shall not extend to callicoes made up in houshold furniture before Dec. 5. 1722. f. 6.

Nor to callicoes dyed all blue. f. 11.

Nor to prohibit wearing, or using in houshold furniture, any stuff made of cotton, or mixed therewith, printed or painted; or any callico chequered or striped; or any callico stitched or flowered in foreign parts with any colour (muslins, neckcloaths, and fustians excepted). [. IO.

4. Every fuch printer, painter, stainer, or dyer shall Houses to be give notice in writing at the next office, of his name and entred. place of abode, and where he intends to work; on pain

of 301. 10 An. c. 19. J. 71.

deliver out and And by the 1 G. A. 2. c. 36. Where any person shall take upon him to print, paint, stain, or dye any filks, linens, or stuffs at any other place than the place of his usual residence or exercise of his trade; he shall first make entry with the officer of the division, where he intends to do the same, and pay down the duties, on pain of 50 l. and also the said goods shall be seized and forfeited. J. 21.

5. The officers shall at all times by day or night, and officer to enter if by night in presence of a constable, be permitted on re- and take acquest to enter such person's house, workhouse, drying place, warehouse, field, or other place used by him, and take an account, and shall make thereof a report in writing to the commissioners or to whom they shall appoint, leaving a copy if demanded, under his hand; and if he

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shall make default in leaving such copy (after demand in writing, 12 G. c. 28. f. 30.) he shall forfeit 40s. 10 An. c. 19. f. 75.

Obstructing the officer,

6. And none of the faid persons shall obstruct the officer in execution of his duty; on pain of 201. 10 An. c. 19. f. 78.

Entry of goods

7. Every fuch printer and other person, shall once in fix weeks make entry in writing at the next office, on oath before the collector or supervisor, of all such goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50l. 10 An. a. 19. f. 72.

But no person shall be obliged to go to make entry, further than the next market town. 10 An. c. 19. f. 73.

Officer may milling.

8. If the officer shall miss any quantity of the said goods, charge for goods whereof he had taken an account in his last furvey, and shall not on reasonable demand receive satisfaction what is become of the fame; the officer may charge such perfon with the duties of the goods fo missing, as if they were printed, painted, stained or dyed. 10 An. c. 19.

Goods concealed.

9. And if they shall conceal any the said goods, to avoid the duty; they shall forfeit 201. And all the filks. callicoes, linens, and stuffs found in any private workhouse, or other place whereof no notice hath been given, or the value thereof, shall be forfeited. 10 An.

Payment of the duties.

c. 19. f. 82.
10. They shall, within fix weeks after entry, clear off the duties; on pain of forfeiting double: and if they shall deliver out any such goods, after default in payment of the duties, before the same shall be cleared of they shall forfeit double value of the goods. 10 An. c. 19. J. 74.

Removing before Ramped.

11. And they shall not remove any the said goods, till the officer hath taken account thereof, and until each piece be framped or marked; on pain of 201. And the fame fo carried away without being marked, and found in the possession of any draper or other person for his use, for fale, may be feized or the value thereof recovered. 10 An. c. 19. f. 79

Goods farveyed to be kept fepa-

12. And they shall keep the goods which have not been furveyed, separate from the goods which have been furveyed; on pain of 51. 10 An. c. 19. f. 81.

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poratio bricks excife. or law shall : faine; fioner:

13. And on oath by any credible person, that he hath Search for goods reason to suspect, that any the said goods are in the pos-unstamped. fession of any draper or other person dealing therein, or of any other to his use, for sale, unstamped; the commissioners within the bills, or any two justices elsewhere. may issue their warrants, requiring some officer of the faid duties (with a constable) in the day time to search for the fame, and to open doors, chefts, trunks, and package, and to feize fuch goods, and bring them to the next office. 10 An. c. 19. f. 98.

14. And if any the faid goods shall be found in any Goods found unplace, on land or water (except on shipboard for exporta- stamped may be tion) without being marked with a stamp or seal, denoting seized. that the duties have been paid or charged; the same shall be forfeited, and may be feized by any officer of the customs or excise, and the person in whose custody they are

found shall forfeit 50 l. 5 G. c. 11. f. 15.

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15. And if any person shall counterfeit the stamp, he Counterfeiting shall be guilty of felony without benefit of clergy. 10 An, the stamps. c. 19. f. 97.

And if any person shall knowingly sell any the said goods with a counterfeit flamp, he shall forfeit 100 l. and be fet in the pillory in some publick place two hours. id.

16. The faid goods having paid the duty may be ex- Exportation, ported; and there shall be a drawback of the duties. 10

An. c. 19. f. 94, 95, 96. 12 An. ft. 2. c. 9. f. 15.

17. The penalties (except as is abovementioned in re- Power of the lation to callicoes) may be fued for, levied, and mitigated Justices. as by the laws of excise, or in the courts at Westminster; and shall be imployed half to the use of the king, and half to him that shall discover, inform, or sue. 10 An. c. 19.

f. 92. 24 G. 2. c. 40. f. 33. 18. And all the utenfils and inftruments for printing, Utenfils liable, painting, staining, or dying such goods, in custody of any the faid persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the fame, in like manner as if such person were the lawful

10 An. c. 19. J. 83.

19. By the 4 G. 3. c. 37. (which establisheth the cor- Cambricks and poration of the English linen company for making cam- lawns to be bricks and lawns) it is enacted, that the commissioners of excise officers. excise, where there shall be a manufactury of cambricks or lawns, or of goods known under that denomination. shall appoint the supervisor or other officer to seal the fame; for which they shall have such fee as the commiffloners shall appoint. f. 17, 18.

The

The manufacturer to give notice in writing to the officer, of the finishing of every piece, before it is taken out of the loom; who shall feal the same at both ends: on pain that fuch manufacturer taking the same out of the loom without having given such notice, and having the same sealed as aforesaid, shall forfeit 5 l. and every such piece shall be forfeited, and may be seized by any officer of the customs or excise. f. 19.

And the officer, with convenient speed, after notice, shall mark, and also number each piece; and make entry in writing, in books to be provided at the expence of the manufacturer, of the number fet to each piece, the length thereof, and the number of threads in the warp; on pain

of 10 l. f. 20.

If the officer shall mark any not made in England, or after the same is taken out of the looms; he shall forfeit 50 l. for each piece to him who shall sue, and forfeit his office, and be incapacitated to hold any other office of trust under the crown. J. 21.

If any person shall by bribery, or otherwise, prevail upon the officer to commit such offence, he shall forfeit 100 l. and stand in the pillory two hours; and if he shall offer any such bribe, he shall forfeit 50 l. f. 22.

And the officer shall yearly, in the month of June, transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made; on pain of dismission: And he, or his executors, shall deliver up the feals, on demand from the commissioners;

on pain of 200 l. f. 23.

Cambricks and lawns made in England, found unstamped, shall be forfeited, and may be seized by any officer of the customs or excise; and after condemnation shall be fold: And every person who shall sell or expose to fale, or have in his cuftody for that purpose, any cambricks or lawns made in England, unmarked, shall forfeit 200 l. f. 24.

But the faid goods so seized, condemned, and fold, shall not be worn in this kingdom, but exported, and not be fold but upon condition of exportation; and shall not be delivered out of the warehouse, until bond be given, to the satisfaction of the collector, in double penalty of the goods, that the same shall be exported, and

not relanded. f. 25.

arked by the

If any person shall counterfeit the seal appointed by this act; or shall import any foreign cambricks or lawns, having fuch counterfeit mark thereon; or expose the fame

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fame to fale knowing the stamp thereon to be counterfeited; he shall be guilty of felony without benefit of

clergy. J. 26.

All goods condemned in pursuance of this act, and all pecuniary forfeitures, (not herein otherwise directed,) shall be sued for and recovered in any of his majesty's courts of record at Westminster, in the name of the attorney general, or of such officer as aforesaid; and be applied (after all charges deducted) half to the use of the king, and half to the officer or other person who pursuant to the directions of this act shall seize, inform, or sue. f. 28.

And if any question shall arise, where the goods were manufactured; the proof shall lie on the owner or claimer,

and not on the officer. f. 31.

IX. Malt.

1. By the 12 An. ft. 1. c. 2. No malt shall be impor- No malt to be ted, on pain of forfeiting the same, and the value there-imported.

of. f. 26.

And if it is brought in from Scotland by sea, it shall be entred at the port of landing, and pay the like duty as English malt, unless a certificate is produced that it hath paid the duty of $4\frac{1}{2}d$. a bushel in Scotland, and then it shall only pay $4\frac{1}{2}d$. more, to make it equal with the English; and if it is brought by land, it shall be carried through Berwick or Carlisle, and there pay in like mannor; on pain of forfeiting the same or the value thereof; and if it is carried beyond Berwick or Carlisle, without entry or payment, the officers of excise may seize the same. 33 G. 2. c. 7. $\int . 10. \quad 1 G. 3. c. 3. \int . 6.$

2. By the 12 An. st. 1. c. 2. (which is continued year-Duty on malt, ly), and by the 33 G. 2. c. 7. there shall be paid by the maker for all malt made in England (except it be made for exportation only, 12 G. c. 4. st. 48.) a duty of 9 d. 2

bushel.

3. And every round bushel with a plain bottom, 18½ What shall be inches wide throughout, and eight inches deep, shall be deemed a busheli deemed a legal Winchester bushel. 12 An. st. 1. c. 2. s.7.

4. The faid duty shall be under the management of Officers for these the commissioners and officers of excise. 12 An. st. c. 2. duties.

. 3.

5. No person making malt (other than compounders) Places of making shall set up, alter, or use any cistern, uting sat, utensil, or to be entred. other vessel, for the wetting or steeping barley or other Vol. II.

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lawns, ofe the corn, or any kiln, floor, room, or other place for making or keeping of malt, without first giving notice in writing at the next office of excise; or shall keep or use any private cistern or other vessel for the wetting his barley or corn, other than such as are known and made use of in his common malting house, on pain of 50 l. 12 An. st. 1. c. 2. s. 36.

Officer to enter

6. The officer shall in the day time be permitted, on request, to enter the house, malt house, and all other places belonging to or used by any maker of malt (either for sale or not for sale); and to gage all cisterns, uting sats, and other vessels used for wetting or steeping corn, and take account of the quantity; and shall thereof make return to the commissioners, or whom they shall appoint, leaving a copy with such maltster; and if any such maltster shall refuse to permit such officer, he shall forfeit 201. 12 An. st. 1. c. 2. s. 4.

Or if he shall refuse or neglect (after demand in writing, 12 G. c. 28. f. 30.) to leave a copy of the gage for the maker, at the time of taking the gage; he shall for-

feit 40 s. f. 31.

And by another clause in the said act, the officer shall on request be permitted, by night or by day, but if in the night then in presence of a constable, to enter the house, malt house, and other place belonging to or made use of by any maker of malt for sale, common brewer, innkeeper, victualler, distiller, or vinegar maker making malt, to gage and take an account of the corn wetting or wetted; and if such maker shall refuse to permit him, he shall forfeit 201. s. 34.

Obstructing the officer.

7. And by a general clause in the 1 G. st. 2. c. 2. If any maker of malt for sale, shall obstruct any officer of excise, in the execution of any of the powers given him for securing the said duties, he shall forfeit 10 l. st. 4.

Manner of gaging.

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8. The officers shall measure corn making into malt, by the gage only, and not by the bushel. 12 An. st. 1.

Time for making.

9. No person shall make any barley malt (except in June, July and August) but that the same shall have in making thereof, that is in the sat, sloor, steeping, and drying three weeks at least; nor in June, July, and August, but that it shall have 17 days at the least (unless it be for his own house): on pain of forseiting for every quarter 2s. half to the king, and half to him that shall sue: And the justices in sessions, and the steward in the leet, may hear and determine the same, as well by presentment

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or fuffi fat, or of any the fan ment of 12 men, as by accusation or information of two

honest witnesses. 2 & 3 Ed. 6. c. 10. f. 2, 3, 4, 5.
10. If any person shall put to sale any malt not well Dressing of malt. trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more; he shall forfeit for every quarter 20d. half to the king, and half to him that shall sue in like manner in the seffions or leet. 2 & 3 Ed. 6. c. 10. f. 3, 4.

II. No person (except it be for his own house) shall Mixing bad ma mingle any malt, not well made, or made of mow burnt, or spired barley, with other good malt, and after put the fame to fale; on pain to forfeit for every quarter 2 s. half to the king, and half to him that shall fue in like manner in the seffions or leet. 2 & 3 Ed. 6. c. 10. f. 3, 4, 5.

And the bailiffs and conflables of the town where malt shall be made, or put to fale, may fearch the same : and if they shall find it to be evil made or mingled with evil malt, they shall with the advice of one justice cause it to be fold to fuch perfons, and at fuch reasonable prices, and under the common price of the market, as to him shall seem necessary and expedient. f. 4.

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12. If any corn, in any ciftern, uting fat, or couch, Preffing malt in steeping or steeped, in order to the making thereof into the cistern. malt by any maltster (other than compounders) shall be found so hard, close, and compact, as it could not be, unless it had been forced together to prevent its swelling; every maltster and maker of malt (other than compounders) where the same shall be found, shall forfeit 5 s. a bushel; and proof being made thereof, the same shall be conclusive evidence of the fact, and subject the maltster to the penalty. 1 G. 3. c. 3. J. 17.

13. No maker of malt (other than compounders) shall Mixing with mix corn of one wetting with corn of a former wetting; wetting. or mix any of his couches or floors, with corn of a former wetting, before the same is put on the kiln for drying: on pain of 5s. a bushel. 2 G. 2. c. 1. s. 11.

14. If any dealer in malt, shall, with malt, fraudulent- Mixing malt ly mix any unmalted corn, or fell or expose to fale any with unmalted fuch mixture, or shall attempt to ship off any such mixture in order to export the same; he shall forfeit 5s. a bushel. 1 G. ft. 2. c. 2. f. 13.

15. If any maltster shall fraudulently convey, or cause Mixing malt or fuffer to be conveyed away, from the ciftern, uting ungaged with malt fat, or other wetting place or utenfil, any steeping or part of any steeping of corn making into malt; and shall mix the same with any couch or floor of other corn making

into malt, which is then depending and in operation, and which hath been gaged or charged with the duty in the couch: he shall forfeit 100 l. 1 G. 3. c. 3. f. 18.

Concealing malt

16. If any maker of malt shall fraudulently conceal any to avoid the daty. malt from the view of the gager; he shall forfeit 10 s. a bushel. 12 An. ft. 1. c. 2. f. 35.

Concealing malt d in the couch.

17. If any maltster shall fraudulently convey, or cause or fuffer to be conveyed away, from the ciftern, uting fat, or other wetting place or utenfil, any steeping or part of any steeping of corn making into malt, so that no gage thereof can be taken in the couch by the officer; he shall forfeit 100 l. 1 G. 3. c. 3. f. 18.

Allowance for malt fwelling.

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18. Out of every 20 bushels charged by the gager, there shall be an allowance made of malt charged in the uting fat, cistern, or other vessel, wherein the same shall be found wetting or fleeping, or on the floor within 30 hours after the same shall be thrown out of such vessel, --- of four bushels, for the difference between the quantity when it is wet and fwoln, and when it is converted into dry malt. 12 An. fl. 1. c. 2. f. 20.

And if any corn that hath been steeped be found working or growing upon the floor before it is put upon the kiln, which when dried will not answer so great a quantity from the floor as from the ciftern; out of every 20 bushels fo charged upon the floor, there shall be allowed to the maker of the malt which shall be gaged upon the floor, after it hath been thrown out of the ciftern 30 hours or more, and before it shall be dried, ten bushels, for the difference between the quantity when it is making upon the floor, and when it is dryed. 12 An. ft. 1. c. 2. f. 28.

But if any malster shall not wet or steep his barley or other corn, in the ciftern, uting fat, or other veffel, fo as the same be covered with water, and continue so covered, for 40 hours before he take the water from it; he shall not be intitled to the said allowance of 4 bushels in

every 20 as aforesaid. 33 G. 2. c. 7. s. 64.

And in order that it may be afcertained when fuch corn is begun to be wetted or steeped, and to prevent frauds in mixing corn with corn steeping; the malster, within a city or market town, shall give 24 hours, elsewhere 48 hours notice in writing to the officer, of the hour or time of the day when he intends to wet corn or grain to be made into malt: And if he shall not begin, and immediately after proceed to cover the whole thereof with water, at the time mentioned in the notice, or within 3 hours affer, the notice shall be void; and he shall be obliged to

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give a fresh notice before he begin. And he shall not begin, but between 4 in the morning, and 9 in the evening. And if he shall not give such notice; or having begun to wet fuch corn, shall not immediately proceed to cover the whole with water, and continue the same covered for 40 hours; or begin to wet any but between 4 in the morning and q in the evening; or after the officer hath taken account of the corn steeping, shall add any fresh corn or grain; he shall forfeit rool. 3 G. 3. c. 13.

19. The maltster shall monthly make entry at the office Entry of malt of excise, of all the malt made (either for sale or not for made. sale) in such month; on pain of 10 l. 12 An. A. 1. c. 2.

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20. And he shall, within four months after entry, pay Payment of the off the duties, on pain of forfeiting double; and after fuch duty. default, he shall not fell or carry out any malt until the duty is paid, on pain of double value. 12 An. st. 1. c. 2.

f. 6. 1 G. ft. 2. c. 2. f. 8.

21. After the duty is paid, if any quantity shall be da- Drawback of maged by the finking of the veffel in which the malt shall be the duty for transported from one part of the kingdom to another; the malt damaged. justices shall at the next sessions, on proof of such damage and of the payment of the duty, settle the quantity of the damage, and the allowance to be made in respect thereof, and give a certificate of the fum allowed, which shall bear the same proportion to the whole duty, as the damage shall bear to the value of the malt: on producing of which certificate, the officer shall repay or allow to the proprietor the sum certified. 12 An. st. 1. c. 2. s. 14.

But where such loss shall happen, the person who shall fustain the same, shall three days before the next sessions, leave notice thereof in writing with the collector of the district where the loss shall happen, and of his intention of

applying to the faid fessions. S. 15.
22. After the duty is paid, if any malt shall be destroyed Drawback for by fire, by burning of the place where it is kept; or perish malt perished. by water, by casting away of the vessel in which it is transported: the owner may make proof thereof by two witnesses on oath, and of his having paid the duty, at the next quarter fessions, where such accident shall happen; who shall grant a certificate of such loss, on producing of which, the duty shall be repaid. 12 An. ft. 1. c. 2. s. 27.

23. The commissioners, or such persons as they shall ap- compounding. point, and in default of fuch appointment the collector and supervisor for the division, may compound for the duties of malt made to be confumed in private families, at 5s. a

head

head by the year; and the houses of such persons compounding shall not be liable to the duty, or to the survey

of the officers. 12 An. ft. 1. c. 2. f. 11.

But if any fuch person shall sell or deliver out any malt, or shall permit any other person to make malt in his house, or shall sell any malt liquor, or shall have more persons in his family than he compounds for, without giving notice of them to the officer of excise at the next quarter day; he shall forfeit 51. and lose the benefit of his composition, and for every bushel of malt so fraudulently fold or made, he shall forfeit 20s. f. 12.

24. No malt entred and made for exportation only, shall be liable to the duties; and no drawback shall be allowed for any malt exported. 12 G. c. 4. s. 48.

2. c. 7. J. 14.

But the maker shall be allowed, in consideration of his extraordinary charge and trouble, 3d. for every quarter

made for exportation. 12 G. c. 4. f. 59.

And by the 1 G. 3. c. 3. There shall be allowed for every 20 quarters of grain made into malt for exportation, thirty quarters of malt, and no more, on exportation, tho' by steeping it shall run out into any greater quantity. f. q.

And the maker, before he shall begin to wet or steep any fleeping of corn to be made into malt for exportation, shall leave notice in writing with the officer, of the quantity of corn intended to be contained in each steeping, on pain of 501. and the same shall be kept separate from all other corn to be made into malt for home confumption, on pain of 5 s. a bushel. 12 G. c. 4, s. 49, 58.

And no maker of malt shall begin to wet corn to make into malt for exportation, above fix days before all the corn he may have working on his floors for home confumption shall be dried off; nor shall he begin to wet corn for home consumption, above fix days before all the corn on his floors for exportation be dried and locked up, on

pain of 5 s. a bushel. s. 50.

And the maker shall keep the whole quantity of his corn making into malt for exportation, of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting, until it hath been measured in presence of the officer; on pain of 501. 3 G. 2. c. 7. f. 16.

And the officers, during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gage and take an account thereof, in all its opera-

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tions, as in case the duties were to be charged thereon. 12 G. c. 4. s. 52.

And persons opposing the officers in the execution of

this act, shall forfeit 501. 12 G. c. 4. f. 58.

And the faid maker shall give notice in writing to the officer, or leave notice at the next excise office, of the hour when he intends to take any malt off the kiln, that he may attend the measuring; and after it has been measured, it shall (on pain of 501.) be immediately carried on ship-board, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt, under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, where-of one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation.

And if he, or any person with his privity, shall open such lock, or make other entrance into the place, or carry any of it away, without consent of the officer, or notice given to him; he shall forseit 100 l. 3 G. 2. c. 7. s. 18.

And when any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer 40 hours before the
time he shall desire to take out the same, expressing in such
notice the quantity of the malt, and the port to which it is
to be removed; the officer shall attend at the place where
the malt is locked up, and see it measured and delivered
out. 12 G. c. 4. f. 53.

And the officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is intended to be removed, who shall sile the same, and make an entry thereof; and if the proprietor shall neglect to deliver such certificate, he shall sorfeit

501. 12 G. c. 4. f. 54.

And persons intending to ship malt for exportation, shall give at least 48 hours notice before they begin to put it on board, to the officer of the port in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5s. a bushel. 12 G. c. 4. s. 57.

And during the shipping, at all such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches

1 4

shall be so kept locked, from the time the ships shall be loaded till they be ready to fail. 12 G. c. 4. f. 56.

And persons breaking open the hatches of any ship so

locked up, shall forfeit 50 l. 12 G. c. 4. f. 58.

And the officers may not only attend the measuring of fuch malt, but continue on board the ships till they be

cleared of their ports. 12 G. c. 4. f. 55.

And if it shall be relanded after shipping for exportation, besides the penalty of the bond which shall be given for its exportation, the same shall be forfeited, and treble

the value. I G. 3. c. 3. f. 11.

And the maker who shall use any such storehouse for keeping of malt for exportation, shall every nine months after the last clearing, clear out the same, on pain of 50 l. G. 2. c. 7. f. 20. Or 5s. a bushel: 12 G. c. 4. f. 57. And by the 1 G. 3. c. 3. he shall clear out in 15 months; on pain of 501. f. 15, 16.

And if any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5s. a bushel. 6 G. c. 21. s. 4.

And if ground malt shall be exported, it shall be computed at so many bushels as it contained before it was

ground. 12 An. ft. 1. c. 2. f. 30.

25. The penalties relating to this article (except where it is otherwise above directed) shall be sued for, levied, and mitigated as by the laws of excise, or in the courts at Westminster; and be employed half to the use of the king, and half to him that shall sue. 12 An. ft. 1. c. 2. f. 9.

24 G. 2. c. 40. f. 33.

26. Persons aggrieved by any judgment of the justices, may appeal to the next quarter fessions, giving fix days notice in writing: but if there be not fix days between the orders of the justices and the sessions, the appeal may be at the fecond fessions. 12 An. fl. 1. c. 2. f. 37, 38. 1 G. 2. A. 2. c. 16. 1. 3.

And the fessions may award costs to either party, to be levied by warrant of the justices or two of them, on the

goods of the party. 12 An. st. 1. c. 2. s. 37.

27. And no certiorari shall be allowed, to set aside any

order of the justices. 12 An. ft. 1. c. 2. f. 37.

28. And all malt in custody of the maker, shall be liable to the duties and penalties, in the same manner as if he were the lawful owner. 12 An. ft. 1. c. 2. f. 10.

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Power of the justices.

Appeal.

Certiorari.

Malt liable to the duties and penalties.

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X. Paper.

1. By the 10 An. c. 19. and 12 An. ft. 2. c. 9. (which Duty on paper are in part altered and explained by the 12 An. ft. 2. c. 19. imported, and 11 G. c. 7.) certain duties are imposed on paper imported; which shall be under the management of the commissioners of the customs.

But old rags, old ropes, or junks, or old fishing nets

may be imported duty free. II G. c. 7. f. 10.

2. And by the said acts of 10 An. c. 19. and 12 An. Duty on paper st. 2. c. 9. certain duties are laid on all paper made, and made in Great also on all paper painted in Great Britain, as followeth:

| La dispendience of the property of the second of the | s. | d. |
|---|----|----|
| For every ream (at 20 quires of 24 sheets each) to the ream) of demy fine | 2 | 3 |
| Demy fecond — | 1 | 6 |
| Crown fine | 1 | 6 |
| Crown fecond | I | IL |
| Fool's cap fine | 1 | 6 |
| Fool's cap fecond | I | IL |
| Fine pots — — — | 1 | 6 |
| Second Pots — — — | 0 | 9 |
| Brown large cap | 0 | 9 |
| Small ordinary brown ——— | 0 | 6 |

Whited brown 9 d. a bundle, each bundle containing

40 quires.

danie.

Pasteboards, mildboards, and scaleboards, 3 s. a hundred weight.

All other paper not particularly charged, after the rate

of 181. for every 1001. value.

Painted paper (beside the duty paid for the paper before painting) $1^{\frac{1}{2}}d$. a yard square.

But pasteboard made of paper that hath paid the duty,

shall not be charged with further duty.

And books printed at Oxford or Cambridge, in Latin, Greek, Oriental, or northern languages, shall have a

drawback of the duty on paper.

The faid paper paying ad valorem shall be computed as it shall be worth to be fold at the next market town, by the oath of the maker or his chief workman, according to his knowledge and belief, to be taken before the collector or supervisor.

3. The commissioners of the treasury shall appoint com- Officers of the missioners of these duties; and they shall substitute infe-duties on paper.

rior officers. 10 An. c. 19. f. 41.

for is bours after making or

aces of making o be entred.

4. The maker or painter shall give notice in writing at the next office, of his name and place of abode, and where he intends to make the same; on pain that if he makes any before fuch notice, he shall forfeit 30 l. 10 An. c. 19.

And no person shall use any place for drying the same, or making it fit for use, other than such common place whereof he hath given notice; on pain of 20 l. f. 44.

And all paper, materials, and utenfils found in any private workhouse or other place, for which no entry hath been made or notice given, shall be forfeited. f. 54.

er to enter and take ac-

5. The officer shall by day or night, and if in the night. in presence of a constable, be permitted on request to enter into the house, mill, yard, drying house, warehouse, or other place, and take an account, and make report thereof to the commissioners or whom they shall appoint, and leave a copy (if demanded) of fuch report under his hand with the maker; and if he shall not leave fuch copy (after demand in writing, 12 G. c. 28. f. 30.) he shall forfeit 40 s. 10 An. c. 19. f. 48.

And he shall be permitted to take an account of the quantity of rags, cordage, and other materials, and of all paper in the possession of any painter or stainer, and of their proceedings in making, or in painting or flaining it.

An. c. 19. f. 50.

Mark on paper before painting.

6. And before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that fuch account hath been taken; and if the officer shall miss any quantity whereof he had so taken an account, and shall not on reasonable demand receive satisfaction what is become of it, he may charge the duties for it. 1 G. ft. 2. c. 36. f. 17.

Obstructing the

7. And if any person shall obstruct any officer in the execution of his duty, he shall forfeit 20 l. 10 An. c. 19.

Removing before account taken.

Paper unfurveyed

8. No maker shall remove any paper of which no account hath been taken, without giving two days notice to the officer; on pain of 20 l. 10 An. c. 19. f. 51.

And no person shall remove any such painted paper, until the officer hath taken an account of the quantity thereof, and until every piece or parcel shall be marked or stamped; on pain of 201. 1 G. A. 2. c. 36. f. 18.

o. And the maker or stainer concealing any paper or Concealing from the officer.

materials, shall forfeit 20 l. 10 An. c. 19. f. 53. 10. And the maker and stainer shall keep separate the to be kept sepa- paper which is unsurveyed, for 48 hours after making or Staining,

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flaining, unless it shall be sooner surveyed by the officer;

on pain of 50 l. 10 An. c. 19. f. 52.

11. The maker or painter shall once in fix weeks make Entry of paper entry on oath at the next office, of all paper made by made. him fit for use, with the kinds and quantities; on pain of 50 l. 10 An. c. 19. f. 45.

But no person shall be obliged to go to make entry,

farther than the next market town. J. 46.

12. And the duty shall be cleared off in fix weeks af- Payment of the ter entry, on pain of double duty; and after default in duty. payment, no person shall sell or deliver any out, till the duty is cleared off, on pain of double value of fuch paper fold or delivered out. 10 An. c. 19. f. 47.

13. Paper that hath paid the duty may be exported Exportation. and the duties shall be drawn back. 10 An. c. 19. f. 57,

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But there shall be no drawback allowed on foreign pa-

per exported. 10 G. 2. c. 27.

14. All the excise laws shall be in force for managing Power of the these duties; and the penalties shall be sued for, levied, justices. mitigated, and disposed of, as by the laws of excise. 10 An. c. 19. f. 60, 61. 24 G. 2. c. 40. f. 33.

15. And all paper, materials, and utenfils, in custody Paper and uten-of the maker or stainer, or of any to his use, or in trust distress. for him, shall be liable to all duties in arrear, and to all forfeitures relating to the faid duties, in the same manner as if the offender or debtor were the lawful owner. 10 An. c. 19. J. 55.

For the stamp duties on paper, see title stamps.

XI. Plate.

Importation.

By the 4 W. c. 5. and 6 G. c. 11. additional duties are laid on plate imported, over and above what is charged in the book of rates: which shall be under the management of the commissioners of the customs.

True making of plate.

I. To prevent frauds in the true making of plate, it is Affayers. enacted by the 12 & 13 W. c. 4. and 1 An. ft. 1. c. 9. that (besides the city of London) York, Exeter, Bristol, Chefter,

Chefter, Norwich, and Newcastle upon Tyne shall be apa pointed for the affaying and marking of plate.

And the goldsmiths, silversmiths, and plateworkers in the faid places, shall be incorporated into a company, and chuse wardens yearly. 12 & 13 W. c. 4. f. 2.

And an affayer shall be elected by the company in each of the faid places, who shall be sworn by the mayor.

Maker to be enmed with the wardens of the

company.

1. 4, 5. 2. And every goldsmith, filversmith, and plateworker, within the faid places, and elsewhere, shall before he takes upon him to exercise the said trade, enter his name, and mark, and place of abode, with the wardens of the company where an affayer is; and if he shall not make such entry, or shall strike any other mark but what is so entred, he shall forfeit double value, half to the king, and half to him that shall sue in any court of record in the county or place where the offence shall be committed. 12 & 13

W. c. 4. J. 7.

Cleffers

3. And every goldsmith, silversmith, and plateworker, inhabiting where there is not an affayer, shall first fix his mark, and then fend it to an affayer; and if it be found by the affayer to be of the fineness of the standard, then he shall mark it, and have 6 d. a pound for his trouble: And if any such person shall make any plate (less in fineness than the standard) or put any to sale (except what by reason of its smallness is not capable of the touch) before it shall be assayed and marked; he shall forfeit the fame, half to the king, and half to him that shall sue in any court of record in the county or place where the offence shall be committed. 12 & 13 W. c. 4. f. q.

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4. And as to the fineness thereof by the standard, it is enacted by the 6 G. c. 11. that plate may be made, either according to the old standard (of 11 ounces and 2 penny weights fine filver in every pound troy); or according to the new standard (of 11 ounces and 10 penny weights): but differently marked. /. 4I.

5. That is to fay, plate of 11 ounces and 2 penny weights, shall be marked with the maker's mark, viz. the first letters of his christian and surname; the mark of the goldsmiths company in London, viz. the leopard's head, lion passant, and a distinct variable mark to denote the year; (or, with the mark of the worker or maker, and with the mark appointed to be used by the affayers at York, Bristol, Chester, Norwich, or Newcastle-upon Tyne:)

And plate of 11 ounces and 10 penny weights shall be marked with the maker's mark, viz. the first letters of

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his christian and surname; and the mark of the faid company, viz. a lion's head erased, the figure of a woman called Britannia, and the said mark or letter to denote the year; (or, with the mark of the worker or maker, and the mark of one of the faid cities or towns.) 12 G. 2. c. 26. f. 5.

Licence of dealers in plate.

1. No person, who shall trade in, vend, or sell any Licence. gold or filver plate, or any goods or wares in which any gold or filver shall be manufactured, shall by himself, or by any other imployed by or for him, either publickly or privately, trade in, vend, or fell any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of filver shall be of the weight of 30 ounces or upwards; unless he shall have first paid a duty of 5 l. for a licence to be taken out in manner following. 32 G. 2.

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2. That is to fay, if it is within the limits of the chief How to be taken office of excise in London, the same shall be granted under out. the hands and feals of two commissioners of excise; and the duty for the same shall be paid at the chief office of excise in London, or at any other place, and to such perfons as the faid commissioners shall appoint to deliver out fuch licences, and to receive the faid duty: Elsewhere, to be granted under the hands and feals of the feveral collectors and supervisors of excise, within their respective districts; and the duty for the same shall be paid by the persons taking out such licences, at the office of excise next adjoining to the place where they respectively reside or inhabit, or at any other place, and to fuch persons as the commissioners of excise shall appoint to deliver out fuch licences and to receive the faid duty. 31 G. 2. c. 32. J. 3

3. And fresh licences shall be taken out yearly, ten To be renewed days at least before the expiration of 12 kalendar months yearly.

after taking out the first licence. J. 4.

4. And if any person shall prosume or offer to trade in, Penalty of dealvend, or fell any gold or filver plate, or any goods or wares in which any gold or filver shall be manufactured, or any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of filver shall be of the weight of 30 ounces or upwards as aforefaid, with-

out first taking out such licence, and renewing the same

yearly; he shall forfeit 201. f. 4.

Not to extend to 5. Provided that no person shall be liable to take out small quantities. any licence for trading in, vending, or felling any quantity of gold not exceeding two penny weights, or of filver not exceeding five penny weights, in any one feparate and distinct ware or piece of goods. 32 G. 2. c. 24. f. I.

Auctioneers and others felling late to be semed traders.

6. All persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or filver, or in which any gold or filver shall be manufactured; and also all persons employed to sell any gold or silver plate, or any fuch goods or wares aforefaid, at any auction or publick sale; shall respectively be deemed traders in, sellers, or venders of gold or filver plate, and shall take out a licence for the same. 31 G. 2. c. 32. f. 6.
7. No pawnbroker shall by himself or by any other for

Pawnbrokers and refiners.

his benefit (either publickly or privately) trade in or fell any gold or filver plate, or any goods or wares in which any gold or filver shall be manufactured; and no person by himself or by any other for his benefit shall use the trade of a refiner of gold or filver, without taking out and renewing yearly such licence as aforesaid. c. 24. 1. 4.

And every fuch pawnbroker and refiner shall be deemed to use the trade of felling or vending gold or filver

plate. id.

And if any pawnbroker shall trade in or sell any gold or filver plate, or any goods or wares in which any gold or filver shall be manufactured, or shall practife the business of a refiner, without such licence, or shall not have renewed the same yearly, and made such payment as aforesaid; he shall forseit 201. id.

Unto what places

8. No licence shall authorize any person to whom the licence shall the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold or filver plate in any other shop or place, except in fuch houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such licence, or in booths or stalls at fairs or markets. G. 2. c. 32. f. 7.

Partners.

q. Persons in partnership and carrying on their trade or business in one house, shop, or tenement only; shall not be obliged to take out more than one licence in one year. 31 G. 2. c. 32 f. 7.

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To. Profecutions for offences may be in the courts at Profecution for Westminster; or otherwise, if within the limits of the chief offences, office of excise in London, the same may be before three commissioners of excise, and in case of appeal before the commissioners of appeal; and elsewhere, before two justices residing near to the place where the offence was

committed, 31 G. 2. c. 32. f. II.

And the said commissioners of excise, and commissioners for appeals (in case of appeal), and justices respectively, shall upon complaint or information on oath summon the party accused; and upon his appearance or contempt, shall proceed to the examination of the sact; and on due proof made thereof by confession, or oath of one witness, shall give judgment; and issue warrants under their hands for levying the penalties by distress (if not redeemed in 14 days); and for want of sufficient distress, shall imprison the offender till satisfaction be made. id.

And they may mitigate the faid penalties of 201. as by

the laws of excise. 32 G. 2. c. 24. f. 8.

Persons aggrieved may appeal to the next sessions. 31

G. 2. c. 32. f. 11.

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very thereof being first deducted) shall be distributed, half forseitures. to the king, and half to him who shall inform or sue. 31 G. 2. c. 32. f. 12.

Duty to be paid by the user.

1. By the 29 G. 2. c. 14. there shall be paid, by all Duty to be paid persons and bodies politick or corporate, for all filver plate by the ascar which they shall own, use, have, or keep, these several annual duties, viz. For 100 ounces troy weight, and not amounting to 200, 5s.; for 200, 10s; and so 5s. more for every 100 ounces to the number of 4000, and for 4000 ounces and upwards shall be paid the sum of 10l. The same to be under the management of the commissioners of excise. f. 1, 2.

But plate belonging to places of religious worship and

only used there shall not be charged. f. 9.

Nor stock in trade of any goldsmith, silversmith, manufacturer, seller of or dealer in plate; but they shall pay for plate used in their families. f. 9, 10.

Also persons having plate pledged to, or deposited with them, shall not be charged, unless they also use the same:

but the true owner shall be charged. f. 7. 8.

Entry and pay-

2. And all persons and bodies corporate, who on July 5. 1756, shall own, use, have, or keep any plate chargeable to these duties, within the limits of the chief office of excise in London, shall make entry thereof in writing at the said office within 30 days; and elsewhere, at the next excise office in 40 days: And all persons who shall after July 5, 1756, begin to own, use, have, or keep any such plate, shall make the like entry in 20 days: And at the time of such entry, shall pay the duties; for which the excise officers shall give a receipt. s. 3, 12.

And the duties shall continue payable from July 5, annually; or from the time of beginning to keep such plate

respectively. f. 3.

And within 30 days after the commencement of each year, fresh entry shall be made, and the duties paid.

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But persons having made entry and payment, and afterwards acquiring other plate within the year, shall not enter nor pay for the same, till after the expiration of such year. $\int_{-\infty}^{\infty} 5$.

Persons neglecting to make entry as aforesaid, or concealing plate to avoid the duties, shall forfeit 201. s. 4.

But if they shall enter and pay before prosecution, altho' not strictly within the time, they shall be indemnified. f. 6.

And if any person having made entry and payment shall die within the year; he to whom the property shall come shall not be liable to pay for the residue of the year.

Power of the justices therein.

J. 11.

3. Profecutions for the duties and for forfeitures and other offences against this act shall be in the courts, at Westminster: or otherwise, the prosecutions for forfeitures and offences, if it is within the limits of the chief office of excise in London, shall be determined by three commissioners, and in case of appeal, by the commissioners of appeal; and elsewhere, by two justices residing near to the place where any forfeiture shall be incurred or offence committed; and the informer or defendant aggrieved may appeal to the next sessions, whose judgment shall be final. J. 13.

And on complaint or information on oath exhibited and brought before fuch commissioners or justices, they shall summon the party accused; and if it is a body politick, shall summon the chief officer or officers thereof; and on appearance, or contempt, shall proceed to

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the examination of the matter of fact; and on proof by confession, or oath of one witness, shall give judgment, and issue warrants for levying the forfeitures and penalties on the goods of such person or body politick, and cause sale to be made thereof if not redeemed in 14 days; and for want of sufficient distress, otherwise than in the case of a body politick, shall imprison the offender till satisfaction be made. 1. 13.

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Which faid forfeitures and penalties (necessary charges for the recovery thereof being first deducted) shall be half to the king, and half to him who shall inform or sue. f. 14.

in the model to the Exportation.

be allowed by the commissioners of the customs or three of them. 9 6 10 W. c. 28. f. 1.

But no drawback shall be allowed on the exportation of filver plate. 31 G. 2. c. 32. f. 9.

For other regulations concerning plate, not relating to any of these duties, the reader may consult the statutes at large mentioned under this head; and especially the 12 G. 2. c. 26.

you to have based no a XII. Salt.

1. The duties upon falt shall be under the management Officers for the of the commissioners of excise. 5 W. c. 7. f. 5.

Or particular commissioners may be appointed; in which case they shall have the same powers as commissioners of the excise. 1 An. st. 1. c. 21. f. 26.

And all collectors and other officers for afortaining, collecting, or receiving the duty, shall be appointed under the hands and seals of the said commissioners. 5 W. c. 7.

And no person shall act as chief commissioner until he shall before a baron of the exchequer take the oaths of allegiance and supremacy, and the oath following:

You shall swear to execute your office, truly and faithfully without favour or affection, and shall from time to time account make and deliver to such person and persons as his majesty shall appoint to receive the same; and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint on that behalf: So help you god. 5 W. c. 7. 1. 14.

Vol. II. G And

And no person shall be capable of any office relating to the faid duties (other than that of chief commissioner), until he shall before two commissioners, or two justices of the peace where he shall be appointed officer, take the faid oaths of allegiance and supremacy, and the said last mentioned oath mutatis mutandis. 5 W. c. 7. f. 15.

British falt imported.

2. By the 2 & 3 An. c. 14. No falt of the produce of Great Britain shall be imported or landed in England; on pain that the same shall be forfeited, and also the fhip and tackle; and every person affifting therein shall forfeit 201. or be imprisoned fix months, f. 1. (And by the 5 G. c. 18. f. 23. this is extended to falt shipped for exportation, and put on thore again, or taken out of the veffel.)

And the falt officers may at any time within two months, feize the falt, ship, and tackle; and if the owner shall not in 20 days claim the fame, and give fecurity to answer the

value, they shall be fold. In f. 2. and which are all

But this shall not extend to falt shipped to be carried

coaltwise by certificate. 1. 3.

Alfo, where falt entred for exportation, shall be forced into any port by weather, enemies, or other necessity, the owner or mafter may within 20 days reland the falt, so as entry be made, and the drawback repaid.

Also, where a ship shall come in from Ireland, or any other foreign part, having any falt on board, which was taken in only for provision of the ship; the master may land the same, so as entry be made in ten days, and the duty paid or secured as for foreign salt imported. id. 6. But if he shall not enter and pay, or secure the duty in ten days, and before it be landed, the same shall be forfeited; and the master, owner, or importer, shall forfeit

double value. 5 G. c. 18. f. 18.

By the 5 G. 3. c. 1. (which is of force only for 12 months) on the importation of falted provisions from Ireland, shall be paid a falt duty of 3s. 4d. for every barrel of salted beef or pork; 1 s. 3d. for a hundred weight of bacon, dried falted beef, dried neats tongues, and dried hog meat; and 4d. for a hundred weight

of butter.

ported.

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Foreign falt im- 3. By the 5 W. c. 7. There shall be paid for every gallon of foreign falt imported, 3d. over and above other duties. 1. 3.

And by the 9 & 10 W. c. 44. an additional duty is laid, of 7d. a gallon. f. 3. The fame amounting in the whole to 6 s. 8 d. a bushel. 8 G. c. 4.

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The gallon to be rated after eight gallons to the bushel Winchester measure. 5 W. c. 7. s. 18.

And 84 lb. weight of foreign salt shall be deemed a

bushel. I An. st. 1. c. 21. f. 6.

Which said duties shall be paid by the importer, on entry, and before landing; yet, on giving fecurity to the collector, he shall have fix months time for payment: But if he pay ready money, he shall have after the rate of 101. per centum per annum abated. 9 9 10 W. entry or payment of duties :

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And by the 5 An. c. 29. If the falt imported amounts in the whole to more than 40 bushels, a further time is allowed for payment of the duties: In order to which, the falt shall on landing be weighed, cellared, and locked up in the presence of a falt officer, under the custody of the merchant or importer (who is to be at the charge of the cellarage or storehouse); and the merchant or importer may in prefence of a falt officer, and by warrant or permit under his hand and feal, have what quantity thereof his occasions may require, not under 40 bushels at a time; giving fecurity for the duty of what quantity he receives, payable in fix months; and if he shall pay ready money, he shall have after the rate of 10 l. per centum per annum abated. J. I, 3.

But if fuch foreign falt imported, shall not on landing be secured as aforesaid, it shall be liable to payment of duties, and to fuch penalties for not paying or fecuring the fame, as if this act had not been made; and no falt fo cellared and locked up shall be removed without notice first given to the officer, and without a warrant and permit for conveying it; on pain of forfeiting fuch falt, and 10s. a buffiel, and also 201. to be recovered of the importer; and the carrier or person removing it, shall be also liable to the penalty of 10s. a bushel, and 20l. for

every offence, f. 2.

And no foreign falt shall be imported in any ship or veliel of less burden than 40 tuns, and in bulk only (except for the necessary provisions of the ships); on pain of forfeiting the falt and double value thereof, to be recovered

of the importer. 3 G. 2. c. 20. f. 18.

4. And if any falt be landed before entry made with the Landing falt be falt officer, or before the duty paid, or without a warrant fore payment of for landing the same signed by the salt officer; it shall be forseited, or the value, and also tos. a bushel. 9 5 10 W. c. 44. f. 6. And moreover every person affisting therein, shall forfeit 1001. 5 G. c. 18. f. 24. down of he that since the Good to the old he hos. And

Search on fhipboard.

5. And any officer of the falt duties, or customs may go on board any vessel, to search if there be any falt on board, and may feize the same if it be found in any other vessel than that wherein it was brought into port, unless it had been entred, or the duty paid; and all such falt shall be forfeited, or the value thereof, to be recovered of the master or owner of the vessel, who shall also be liable to all other penalties as if the fame had been landed without entry or payment of duties: and every person obstructing fuch officer, shall forfeit 40 t. 5 G. a. 18. f. 22.

Ships hovering mear the coaft.

6. And where any veffel, laden with falt, shall be found hovering on the coasts, the officers of the customs or falt duties may go on board and compel them to come into port, and may continue on board, till the falt shall be unladen, or the ship depart on her voyage; And if the persons on board fuch ship, or any other vessel importing salt, shall neglect or refuse to enter, or to unlade such falt, for 20 days after it is come into port, or within that time to depart on their voyage, unless permitted by the chief officer of the cultoms to fray longer; in such case all the salt on board shall be forfeited, and double value thereof, to be recovered of the mafter or commander of the veffel, I An. ft. 1. c. 21. f. 7.

Duty on home

sal the gother.

7. By the 5 W. c. 7. a duty is laid on home falt of 1 1 d. a gallon. J. 3.

Which by the 7 & 8 W. c. 31. is explained to extend to all falt made from rock falt, falt refined, or falt made from falt. J. 43.

And by the 9 & 10 W. c, 44, 2 further duty is im-

posed on all such salt, of 3 d. a gallon. f. 5. The same amounting in the whole to 3 s. 4 d. a bushel.

Note; By the 3 G. 2. .. 20. These duties were repealed, but were revived by the 5 G. 2. c. 6. for three years, and fo from time to time continued, and at last by the 26 G. 2. c. 3. made perpetual,

And by the q An. c. 23. A further duty of qs. a ton. is laid on all rock falt exported to Ireland. f. 44.

And rock falt shall be ascertained as to payment of the duties, at 65 pounds weight to the bushel. I An. ft. I. £. 21. 1. 9.

All other falt at 56 pounds to the bushel. 95 10 W.

£. 44. J. 34. Drawback on 8. Where any rock falt for which the duties shall have cook fait refined been paid or secured, shall be melted or refined; the perfon who shall refine it into white salt, shall have an abatement out of the duty of the faid white falt, of fo much

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as was charged on the faid rock fo melted and refined; fo as the rock fo refined were before the melting thereof weighed in the presence of the officer; and so as oath be first made before a justice near adjoining, of the particular quantity of rock falt by fuch refiner imployed in making the faid white falt, and that he or any other perfon by his privity did not increase the faid rock falt by mixing or other undue practice, and that no former allowance for the faid rock falt had been made to his use: and fo as due proof be made upon oath or otherwife, that the duties for the faid rock falt so refined were paid or secured. 10 & 11 W. c. 22. S. 6.

And no rock falt shall be refined or made into white falt in any place except within ten miles of the pit, or at fuch places as were used for refining rock falt before May 10, 1702. on pain of 40 s. a bushel. 1 An. st. 1. c. 21.

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9. Every maker of falt, refiner of rock falt, and pro- Entry of falt prietor of any falt works or pits, who shall set up or use works and pits. any salt work, salt pit, salt pan, storehouse, warehouse, or other place, for the making, laying, refining, or keeping of falt or rock falt, without giving notice thereof at the next salt office; shall forfeit 40 l. I An. fl. 1. c. 21.

on sales?

10. And if any falt maker, importer of falt, or refiner Officer to enter or proprietor of rock falt, shall on request or demand and survey. made, in the day time, or in the night in presence of a constable, refuse to permit the officer to enter and come into his works, warehouse, storehouse, or other place for making, laying, refining, or keeping of falt; he shall torfeit 401. 1 An. fl. 1. c. 21. f. 2.

11. And, generally, if any person shall obstruct any of- Obstructing the ficer in the execution of his office, or of the powers given officer. him by any law relating to the falt duties; he shall forfeit 201. and for nonpayment, and in default of diffress, he may be committed to the house of correction, to be whipt and kept to hard labour for any time not exceeding one

month. 1 An. fl. 1. c. 21. J. 4.

12. No falt shall be delivered from any falt works or Removing falt pits, without notice first given to the officer; on pain of without notice and entry. forfeiture of the falt fo delivered, and of 201. by the owner of the works or pits. 5 W. c. 7. f. 19.

And by the 9 & 10 W. c. 44. No falt shall be delivered from any falt works or pits, without notice given to the officer; on pain of the owner forfeiting the fame, and 10s. a bushel. f. 26. Dyra ni, ocasa sala sa

And if any officer shall deliver, or be consenting or privy to the delivering, removing, or conveying, British white falt, refined falt, rock falt, or falt rock, from any falt work, crib, storehouse, warehouse, or other place made use of for making, refining, or keeping of any such salt; or from any falt pit; or to the landing any foreign falt out of any veffel importing the same from beyond the seas; before the same be duly entred and charged in the book kept for that purpose: he shall forfeit, over and above the penalty of his bond entred into for the due performance of the trust reposed in him, double the value of such falt, and also 10 s. a bushel. 5 G. 3. c. 43. s. 40.

13. The collector shall provide at every falt work or pit, a fufficient beam, scales, and weights, or stilyard, and shall have liberty to fix the same, for weighing the falt that shall be delivered from thence; and one or more persons living near, shall be admitted and sworn to the true weighing of fuch falt, before one justice near adjoining, without fee; and he shall be paid by the collector or officer for the duties. 7 & 8 W. c. 31. f. 46.

14. Every owner of any rock pit, who shall take any rock falt out of fuch pit, shall before the removal thereof, cause the same to be weighed in the presence of the salt officer, who shall attend at all reasonable hours in the day time to fee it weighed, and take an account and make return thereof in writing under his hand to the commissioners of excise, or whom they shall appoint, leaving a true copy under his hand with the proprietor: and if the proprietor refuse to weigh it in presence of the officer when taken out of the pit, or fuffer any rock falt to be removed from the pit before it hath been weighed; he shall forfeit 20 l. and double value. 10 & 11 W. c. 22. f. 3.

15. All makers and proprietors of falt shall make entries with the falt officers of the quantity by them made and delivered, or imported; and shall have a warrant under the hand and feal of an officer, impowering them to carry away the fame, before it shall be removed, which warrant the offcer shall give on paying or securing the duties (in nine months, 5 An. c. 29. f. 5.) But if any person at the time of entry shall pay ready money, he shall have after the rate of ten per centum per annum al-

Payment of the

Entry of falt

lowed. 5 W. c. 7. f. 6.

16. And the proprietor of rock pits shall clear off the duties of all rock falt, in two days after the charge made by the officer, or within the faid two days give fecurity to pay the same (in twelve months, 5 An. c. 29. f. 5.);

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on pain of double value of the duties: But if he shall pay within the two days, he shall be allowed after the rate of 10 l. per centum per annum, for the said twelve months. 10 & 11 W. c. 22. f. 4, 5.

17. And persons giving security for payment of the Discount on duties, may at any time within 28 days after giving the payment. fame, pay the duty, and shall have a discount after 10 l. per centum per annum for the remainder of the time. I An.

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18. But the owners of rock falt, may remove it out of How far rock the pits, or warehouses adjoining or belonging to such pits, falt may be reinto their other warehouses or places for storing thereof, duty unpaid. for convenience of felling or shipping after entry made, and a warrant taken for the same from the next officer; and shall not be obliged to pay or secure the duty on such removal. 5 W. c. 7. f. 22.

19. Therofficers may feize all falt carried before en-Salt carried with try, without a permit, and the same shall be brought to out a permit,

the next office; and if it shall not be claimed by the owner or one deputed under his hand, in ten days, it shall be forfeited and sold the next-general day of sale : And if it be claimed in ten days, and the claimer doth not make it appear by the oath of one witness that it had been duly entred, and a warrant obtained for removing it, it shall likewise be forfeited: And every person who shall carry or cause it to be carried before such entry and warrant, shall forfeit double the value. 5 W. c. 7. 1. 7. And also 10 s. a bushel. 9 & 10 W. c. 44. f. 12. directo onse: and in delicate of

And by the I An. ft. 1. c. 21. If any falt carrier, or other person, shall remove any salt from any salt works, or place thereunto belonging, without entry and payment of the duties or fecuring the fame, or without a permit; the officers may not only feize the falt, but also apprehend the offender, and if he shall not on conviction pay the penalties, and no fufficient diffress can be found, he may be committed to the house of correction to be whipt and kept to hard labour for any time not exceeding one

month. f. 4.

And by the 2 & 3 An. c. 14. The carrier, who shall carry any falt without a permit, shall forfeit 201, f. 8.

20. And every person in whose possession any falt shall Salt sound unhe found, near the falt works or fea costs, which hath not entred. been entred, and the duty paid or fecured; shall if it be foreign falt, be liable to fuch penalties, as if he had landed the same without entry or payment of duties; and if it be

English falt, he shall be liable to such penalties, as if he had removed it from the salt works without entry or payment of duties, and without a permit; unless he shall make it appear, that he bought it of a maker, retailer, or importer of salt, and of whom. I Am At 1. c. 21. s.

Several permits to be delivered with several parcels. 21. The falt officer shall deliver grans and without delay, so many several permits to each carrier of salt, as he shall demand for such several horse loads of salt as he shall load at one time, and at one salt work. 758 W. 631.

Officer may demand fight of the permit.

22. The officer, where he shall meet with any person carrying salt, by day or night, by land or water, may demand a fight of the permit; and if he shall suspect that there is more salt than is expressed in the permit, he may at his own expence re-weigh the same; and if the salt on re-weighing shall be found to be more in weight than is contained in the permit, the surplusage shall be forfeited; and the person or persons concerned in carrying the same, shall be liable to the penalties and forfeitures as persons carrying salt without payment of the duties. 5 G. 3. 6. 43. f. 42.

Prices of falt.

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23. The lord mayor and aldermen in London, and the justices of the peace in the country at their general sessions, may set and publish in writing the prices or salt, and alter the same as there shall be occasion: and persons resuling to sell at sach price, or selling at a higher price, shall forseit 5 l. half to the king, and half to the informer, by distress, by warrant of the lord mayor or any such justice; and in default of sufficient distress, to be imprisoned till paid. 7 & 8 W. c. 31. f. 92.

Salt to be fold by weight, 24. By the 95 to W. c. 6. No person dealing in salt, shall sell it otherwise than by weight, after the rate of 56 pounds to the bushel; on pain of 51 to the informer; to be determined by two justices residing near: And the party grieved may appeal to the next sessions. And the said justices shall on complaint summon the party accused, and on appearance or contempt examine the matter, and on proof by the oath of two witnesses, or confession, give judgment, and shall issue their warrant to levy the same by distress, and cause sale thereof to be made, if not redeemed in six days, rendring the overplus, and for want of sufficient distress, shall imprison the offender till satisfaction is made.

And no person shall bny salt otherwise than by weight, and not by measure; on pain of 10 s. a bushel, and so proportionably. 1 An. st. 1. c. 21. f. 28.

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25. No retailer or shopkeeper shall ship any falt to be Carrying coastfent to any port within the kingdom, before he hath made wife.
it appear by oath or otherwise, before the commissioners or
a salt officer, that the duty is paid or secured, or that it
was bought of some other retailer or shopkeeper that hath

paid the duty. 3 W. c. 7. 1. 8.

And all fait to be put on shipboard, shall be weighed at the place where taken on board; and none shall be carried on board before it is weighed, and a permit containing the quantity is obtained; on pain of forfeiture, and 10s. a bushel: But if the officer shall not attend to weigh it, or refuse to give a permit, it may be carried on board without incurring any penalty.

f. 10, 11.

And where any falt shall be laid on shipboard, the officer of the customs where it shall be laden, shall in the
cocquet (which cocquet shall be also signed by the salt officer) express the quantity: And if such ship shall come
into any port, the officers of the customs or of the salt duties, may go on board and demand a sight of the cocquet,
and if any such officer shall have just cause to suspect, that
there is not so much salt on board as the quantity expressed in the cocquet, and shall make affidavit thereof,
before the collector or customer of the port, or person executing either of their offices; he may weigh all the salt
on board; and if there shall not be so much as the cocquet expressed (making allowance for waste) the salt remaining shall be forseited. I An. st. 1. c. 21. st. 13.

And perfore shipping salt to be carried coastwise, the duties for which have been paid or secured, shall have an allowance for waste after the rate of three bushels for every 40 bushels of white salt, and after the rate of a bushel and an half for every 40 bushels of rock salt; which allowance shall be made but once for the same salt, altho it be carried from several ports coastwise. 5 An.

e. 29. f. 4. 6 An. c. 12. f. 1.

And every commander of any veffel that shall carry salt from one port to another within the kingdom, shall (before he hath a warrant for landing it) deliver to the salt officers in the port of landing, a true particular of the quantity, signed by the salt and customhouse officers of the port from whence he came; and then the master, mate, or boatswain, shall make oath before some of the commissioners or their officers, that to his knowledge there hath not been laid on board any salt since he came from such port. And if the vessel be to deliver one part of the salt

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at one port, and another part at another port, then the officers for the falt and customs, where part of the falt shall be delivered, shall certify on the back of the warrant, or by certificate alone, under their hands and feals, how much of the falt hath been there landed, on pain of forfeiting double the value of the falt that shall be otherwife delivered. 5 W. c. 7. f. 9. And likewife 10 s. a bushel. 9 & 10 W. c. 44. f. 12.

And the officer at the unlading port may go on board the ship, and demand a fight of the permit, and weigh the falt upon unlading; and if it be more in weight than is contained in the permit, the furplufage shall be forfeited. And if the master of the ship shall refuse to shew the permit, the officer may feize and detain the falt till it be produced. And if he do not produce it in four days after seizure, the falt shall be forfeited. 10 & 11 W. c. 22. f. 12, 13.

On reshipping any salt from any boat, barge, or other vessel, and before any dispatches be granted for the falt so reshipped, the master, mate, or chief boatman, shall make oath before the falt officer, that all the falt taken in at the place of lading is reshipped on board such vessel, and that no falt hath been added to it or taken from it, to the best of his knowledge and belief; on pain of forfeiting double the value of the falt that shall be otherwise reshipped, and

likewise 10s. a bushel. 5 G. c. 18. s. 25.

And where any subject hath shipped salt that hath paid duty, in order to be conveyed to some part of England, and any of it is lost at sea (or in any port, harbour, or river, 8 G. c. 4. f. 11.) by storm, or being thrown overboard for preserving mens lives or the vessel (or by finking of the Thip, or be taken by enemies, 9 & 10 W. c. 44. 2 & 3 An. c. 14.); in such case, the merchant or owner of the falt shall, on proof made by the oaths of two witnesses, whereof the master or mate shall be one, at the quarter fessions where he shall inhabit, of the loss of such falt, and that the fame was not occasioned by any leakage of the ship, or any negligence or default of the master or mariners, receive from the faid fessions a certificate that such proof was made before them; and on producing the certificate to the falt officer he shall let him buy the like quantity duty free. 2 & 3 An. c. 14. f. 18. Which certificate shall also vacate the security given for payment of the

duties. 26 G. 2. c. 32. f. 6.

26. When any falt shall be entred to be put on board, and the duty paid or secured; the officer shall, on due notice, by himself, or deputy, between sun rising and setting,

Exportation.

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attend the weighing it out, without loss of time; on pain

of 40 s. 9 5 10 W. c. 6. f. 3.

And the falt officers may go aboard all ships exporting falt, and continue, and take an account thereof; and if any person shall obstruct any such officer, he shall forfeit 1 An. ft. 1. c. 21. f. 15.

And there shall be a drawback of the duties on falt exported. 5W. c.7. f. 11. 10 & 11 W. c. 22. f. 7.

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5 An. c. 29. f. 16. Moreover there shall be an allowance of four bushels for every 40 bushels of white falt, and of two for every 40 bushels of rock falt, exported to Ireland; for the waste in

carriage. 5 An. c. 29. f. 14.

And if any falt, for which the duty hath been repaid on exportation, shall be landed again before the duty be again paid and entry made, and other things performed, as in case of foreign salt imported; the offender shall forseit double value, and 10 s. a bushel, and the other penalties for foreign falt landed unentred. 9 & 10 W. c. 44. 1. 27.

5 W. c. 7. f. 20. And if any ship laden with salt exported, shall by stress of weather or otherwife be drove into any port, the falt officer may come on board, and continue till the ship shall unlade her cargo, or return to sea; on pain of 201, to be recovered of the master who shall refuse the officer to come or continue on board. And if any part of the falt shall be put on shore, without entry or repayment of the duty; the faid falt, and also the whole cargo of falt in the ship, shall

be forfeited. 1 An. A. 1. c. 21. f. 12.

And where any falt, for which the duties shall have been paid or fecured, shall be shipped in order to be exported, and the same shall perish by finking of the ship in the port, before the exporter shall be intitled to a drawback; the exporter or proprietor shall on proof made at the next feffions, to be held next to the place where it shall so perish, of the loss of such falt, receive from the faid sessions a certificate, that fuch proof was made before them; and on producing the certificate to the collector of the falt duties, he shall let such person buy the like quantity duty free.

2 & 3 An. c. 14. f. 10.

And where any falt shall be shipped in order for exportation to Ireland, and it shall perish by finking of the ship, or be taken by enemies; the exporter or proprietor shall, on proof made at the quarter fessions for the place from whence it was exported, of the loss of such falt, receive from the faid fessions a certificate, that such proof was made

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before them; and on producing the certificate to the officer of the place where the duty hath been paid or secured, the security shall be discharged, and the money repaid. 4 An. c. 12. f. 11. 9 An. c. 23. f. 46. Proof to be made in two years. 26 G. 2, c. 32. f. 7.

Salt for curing of fifh.

27. The curers of fish for exportation may import foreign falt, or take from the pit or work British salt (or rock salt refined, 8 G. c. 16. s. 6.) for curing fish for exportation, without duty, except the customs on importation; such foreign salt being landed, and such British salt being taken from the pits of works, and weighed, in the presence of an officer, and being lodged in a warehouse, under a lock both of the officer and proprietor; which shall remain there during the several intervals of the fishing season. 5 G. c. 18. s. 1.

And any person who shall imbezil any foreign salt after importation, and before cellaring, shall forfeit 20 s. a bushel; and any person who shall imbezil any British salt, after weighing at the pits or works, and before cellaring,

thall forfeit 10 s. a bushel. 5 G. c. 18. f. 4.

The proprietor shall enter at the next office the quantity so by him lodged; and the officer shall keep an account of

the quantity in his custody. 5 G. c. 18. f. 1.

And at the beginning of the fishing season, the proprietor or his agent shall make oath in writing before an officer at the next office, declaring the quantity so lodged, and that it is all intended for curing of fish for exportation only, and shall not by his consent be delivered but for the said purpose: after which oath so made and filed, the officer in whose custody the salt hath continued during the interval of the fishing season, shall deliver all the said salt into the sole custody of the proprietor. 5 G. c. 18. f. r.

And in the case of herrings to be cured for exportation, it is enacted by the 8 G. c. 4. and 8 G. c. 16. that the proprietor of such salt delivered duty free, or his agent, shall instead of the said oath, make oath in writing at the next salt office, declaring the quantity of the foreign or British salt respectively lodged for curing of sish, and that it is intended for the curing of sish for exportation only, and shall not by his consent be delivered but for that purpose, except so much thereof as shall be used for curing such red or white herrings as shall be entred for home consumption, and charged with the duties by the said acts respectively chargeable thereupon.

And no foreign falt shall be delivered over from the joint custody of the officer and proprietor, into the fole custody

of the proprietor or his agent, for curing fill for exportation; except he give fecurity to the fatisfaction of the chief officer of the falt duty in the port, that he will account for the foreign falt so by him received, or answer the penal-8 G. 2. c. 12. J. 3.

And for every bushel of falt fo lodged, which shall be either earried away, or found wanting at the redelivering thereof into the fole custody of the proprietor, reasonable allowance for waste being first made; the proprietor shall

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forfeit 20 s. 5 G. c. 18. f. 3.

And at the end of every fishing season, the officer shall take an account of the quantity remaining in hand which shall be locked up as aforefaid; and the proprietor shall (within three months after the expiration of each year, 8 G. c. 4. f. 10.) deliver an account in writing into the office, containing the quantity of fish exported or entred for exportation, on which the falt hath been used; together with a certificate from the officer where it is shipped for exportation, verifying the account; which account shall be also affirmed by the oath of the proprietor or his agent, and remain in the office; and if any of the falt shall be delivered over to any other person, and used by him in curing of fish, that also shall be expressed in the account. and fuch person shall in like manner make another account of all the falt used by him: And if any such person shall neglect or refuse to deliver such account within the faid time; he shall forfeit 401. 5G. c. 18. f. 1.

And if the proprietor of such falt so delivered over, shall not make it appear by oath or otherwise to the proper officer, that fuch falt so delivered over was used for curing of fish; he shall be deemed guilty of imbezilling it, and

forfeit 50 l. 11 G. c. 30. J. 41.

Also the said account shall express the quantity of red or white herrings entred for home confumption, on which fuch falt hath been used. 8 G. c. 4. f. 3. 8 G. c. 1b.

And for every bushel of falt, so taken out of the cellar or oath and certificate; or by certificate from the quarter feffions, that proof was there made, that fuch falt was put on board for curing fish at sea, and was there taken by enemies, or otherwise lost at sea; or shall not be returned into, or found remaining in the cellar or warehouse; the owner or other person standing accountable for the same, shall forfeit 20 s. And the proprietor or his agent selling, giving away, using, or delivering any such falt otherwise

than for the purposes aforesaid; shall forfeit 20 s. a bushel: And every person buying or receiving the same, shall forfeit also 20 s. a bushel: And in default of payment in 14 days after conviction, and where no sufficient effects can be found to answer the same, he shall be sent to the house of correction, to be whipped and kept to hard labour, not

exceeding three months. 5 G. c. 18. f. 2.

For every cask of pilchards or scads exported, containing 50 gallons, shall be paid by the falt officer an allowance of 7s. for every hundred of cod fish, ling or hake (except dried ones called haberdines) of 14 inches long, from the bone in the fin to the third joint in the tail 5s. for every barrel of wet cod fifh, ling, or hake, of 32 gallons 2s. for every hundred weight of haberdines 3s. for every barrel of falmon of 42 gallons 4s. 6d. for every barrel of white herrings 2 s. 8 d. for every barrel of full red herrings 1s. 9d. for every barrel of clean shotten red herrings 1 s. for every last of dried red sprats 1 s. And the officers shall cut off part of the tail of the codfish, ling and hake; and mark the casks of the other fish; that it may be known that they have once had the allowance. 5 G. c. 18. f. 6.

And the maker or curer of red herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next falt office, and pay 1s. 8d. a thousand. And if they be packed up in casks, the number shall be marked on the head; and a permit shall be given by the salt officer, expressing the number, and the mark and number of the casks, and for what place they are intended, and whether to be sent by land or water; on pain of forseiting all the red herrings removed otherwise, and also 40s. a thousand. 8 G. r. 4. f. 2. And as the duties on salt shall rise or fall, the 1s. 8d. a thousand shall rise and fall proportionably.

And the maker or curer of white herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 3s. 4d. a barrel; and the cask shall be marked on the head, shewing the contents: then a permit shall be given by the salt officer, expressing the quantity, and mark and number of the casks, and for what place they are intended, and whether to be sent by land or water, on pain of forseiting all the white herrings removed otherwise, with the casks, and also 40 s. a cask.

8 G. c. 16. f. 2.

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And the officers at all times in the day, or in the night in presence of a constable, may enter into the cellars and warehouses, and inspect the curing of the fish, and gage the falt, and mark the casks, and see them exported; and if any person shall obstruct them, he shall forfeit 20 l.

5 G. c. 18. f. 7.

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No herrings, pilchards, scads, codfish, ling, hake, falmon, or dried red sprats, shall after they be put on board any boat or veffel, in order to be exported, be taken out thereof, otherwise than to put the fish into the thips in which they are to be exported, nor put on shore but in presence of a salt officer; on pain that the fame shall be forfeited, and also the ship and tackle; and every person affisting therein, shall forfeit 20 l. or be imprisoned fix months. 5 G. c. 18. J. 23. 2 & 3 An. 6. 14. 1. 13.

If the faid fish shall not be exported, for want of an opportunity, while they are good and merchantable; the owner may cause them to be destroyed in the presence of an officer: and the officer's certificate that they were destroyed, shall be admitted to verify the account. 8 G.

6. 4. J. 4. Hord

No person shall cure or pack pilchards, for sale, unless he be owner or part owner of a feyn or drift net, or have the confent of fuch owner in writing, and that on each cask or hogshead the word seyn or drift shall be burnt with an iron, together with the name and furname of the owner, and the number of pilchards; on pain of double

value, I An. A. 1. c. 21. 1. 31.

28. For every barrel of falted beef or pork exported Salt for curing of for fale, there shall be allowed 5s. a barrel, to be paid beef and pork. by the falt officer in 30 days after demand, on a debenture to be prepared by the collector of the customs, and verified by the fearcher as to the quantity, and that it is good and merchantable; and the oath of the exporter or agent shall be first taken before the principal officers of the port, that it was falted with falt for which the duties have been paid and not drawn back, and that it is really exported for fale, and that no part thereof was spent nor intended to be spent for the ship's use, and not intended to be relanded; and the falt officers, on exportation of beef or pork, may mark the barrel or vellel, that it may be known to have been exported. 5 An. c. 29. f. 8. THE !

And if any such beef or pork shall be relanded, it shall be forfeited, and also 40s. a barrel; to be recovered of

the importer or proprietor. f. 9.

29. No

Appeal,

Using brine or sock falt for curing of flesh or fish.

29. No person thall use any brine before it is boiled into salt, or any rock salt before it is refined into white salt for pickling or curing of flesh or fish, or preserving any provisions; on pain of 40 s. for every gallon of brine, or pound of rock salt. I An. ft. 1.

6. 21. 5. 5.

And every person who shall carry any brine from the salt pits (other than the known proprietors of pans for boiling it into white salt) shall likewise forfeit 40s. a

gallon. 5 G. A. 18. f. 17.

Salt selanded from boats or other vessels. 30. Where falt shall be shipped on board any boat, barge, or other vessel, in order to be carried down any river, or to be carried doasswife, for the purposes of the sistery, or to be reshipped for exportation, or otherwise, and the same or any part thereof shall be landed without the presence of an officer; all such salt so landed shall be forfeited, and also ros. a bushel, to be recovered of the owner of the vessel; and also the vessel shall be forfeited, together with the surniture; and every person that shall take any such salt out of such vessel, or carry the same on shore, or convey the same from the shore when landed, or shall be assisting therein, shall sorseit 201. 5 G: 3. v. 43. f. 41.

Power of the 31. Al

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3r. All penalties and forfoitures given by any act relating to the duties upon falt (except where it is herein otherwise directed) shall be employed, half to the use of the king, and half to him who shall seize or inform; to be recovered in such manner, and with such power of mitigation, as any forfeiture may be by any law of excise; or in the courts at Westminster. And every such officer may seize all salt and other things, which by any law relating to the duties on salt are declared to be for-

feited. 5 G. v. 18. J. 26. 24 G. 2. v. 40. J. 33.

And by the 5 G. 3. v. 43. In all cases, where salt or fish of any kind shall be liable to seizure, by virtue of this or any former act; the bags, sacks, cases, or other package, and also the carriages, horses, and other cattle, made as of in carrying the same, shall be forfeited, and

may be feized accordingly. J. 45.

Appeal,

juftices.

32. And if any perion is aggreed by any order of two justices relating to the duties upon fait, or to any forfeiture or offence concerning the same; he may appeal to the next quarter sessions. 10 & 11 W. r. 22. f. 9.

Dealer in falt not 33. But no dealer in falt shall act as a justice of the toact as a justice, peace in any matter relating to the duties upon falt; and if there shall not be a sufficient number of justices

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in any corporation, not dealers in falt, the justices of the county shall have power to act therein. I An. A. I.

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c. 21. f. 18. 34. If any falt, as well British as foreign rock falt, Proof to lie on or falt refined from rock falt, or red or white herrings, not on the officer. or any other fort of fish, be seized for non-payment of duties, or any other cause of forseiture, by any of the laws relating to the duties on falt or fish now in force: and any dispute shall arise, whether the same had been duly entred, and the duties paid or fecured; or that fuch falt or fish had been legally condemned; or that the falt had been duly entred and locked up for the fifhery; or that the quantity of falt used in the curing of fish. as fet forth in the curer's account, was used: the proof shall lie on the owner or claimer of such falt or herrings, or the curer of fish, and not on the officer.

XIII. Soap.

5 G. 3. c. 43. J. 44.

1. By the 10 An. c. 19. and 12 An. A. 2. c. 9. There Duty on foap shall be paid for all soap imported (over and above former imported. duties) 3d. a pound; which shall be under the management of the commissioners of the customs.

2. And by the faid acts, there shall be paid for all foap Duty on foap made within the kingdom, 1 1d. a pound.

3. And the commissioners of the treasury shall ap-Officers for the point commissioners for the duty on soap made in the duties on soap. kingdom; who shall substitute inferior officers. 10 An.

6. 19. 1. 5. 4. And no maker of foap shall fet up, alter, or use any place of making boiling house, workhouse, warehouse, storehouse, shop, to be entred. room, or other place for the making or keeping of foap, or for the boiling or keeping any oil, tallow, pot-afh, lime, or other materials proper to be made into foap; or use any copper, kettle, furnace, fat, ciftern, trough, or other veffel for the boiling or making of foap, without first giving notice thereof in writing, at the next office for the faid duties; on pain of 501. 10 An. c. 19 TRU

And all foap, oil, tallow, and other materials, which shall be found in any private boiling house, workhouse, warehouse, or other place, and all private coppers, kettles, furnaces, troughs, and other veffels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 An. c. 19. f. 19.

VOL. II.

And by the 5 G. 3. c. 43. Whereas offenders frequently withdraw themselves to avoid the aforesaid penalty; it is enacted, that a fummons left at the place where discovery shall be made of such offence, directed to the person profecuted by his right or assumed name, shall be as effectual as if delivered personally, and directed to him by his proper name. J. 19.

Covers and locks to be provided.

5. And every person who shall make any bard soap, shall at his own expence provide sufficient wooden covers (to be approved of in writing by the surveyor or supervifor) to every copper, pan, or other utenfil, wherein he shall boil or make any hard foap; which veffels, with the covers thereto affixed, and also the pipes that convey the waste or falt lees from the said coppers, pans, or other utenfils, shall be locked and fealed down by the officer, as foon as the fire is damped or withdrawn, whenever any foap or any thing of a foapy quality shall be left therein. Which faid locks, and keys to the fame, and all other necessary fastenings for securing the said vessels and pipes, shall be provided by the surveyor or supervisor, at the expence of the maker. And if any person shall make any hard foap before he shall have affixed such covers, or shall refuse to pay for the locks and keys and other fastenings as aforefaid, or shall wilfully break or damage any such lock, or feal, or other fastening; he shall forfeit 201. 5 G. 3. c. 43. f. 15.

6. The officer shall at all times, by day or night, and

if in the night then in presence of a constable, be permitted on request to enter the house, boiling house, warehouse, or other place, used by any maker of soap; and by gaging, weighing or otherwife, take an account of the quantity, and thereof make return in writing to the commissioners or whom they shall appoint, leaving a true copy, if demanded, under his hand with the maker; and if he shall refuse or neglect to leave such copy (after demand in writing, 12 G. c. 28. f. 30.) he shall forfeit 40 s.

10 An. c. 19. f. 12.

And if any maker shall obstruct the officer, he shall for-

feit 201. J. 15.

Notice of the

Officer to enter

and furvey.

7. Every maker of foap, before he begin any making, time of working. if within the bills of mortality, shall give 12 hours, if elfewhere, 24 hours notice in writing to the officer, of the time and hour when he intends to begin; on pain of 50 l. 11 G. c. 30. f. 33. the he made, or hollor given,

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fquare his foar taken o and the be 2 inc ceed 45 frames before 1 marked expence offence

9. If the copp or new duty, ar 1. 28.

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And putting lees or lye into the copper or other utenfil. shall be deemed a beginning such making, so as to subject him to the forfeiture. 1.34.

And if the making shall not begin in fix hours after the time mentioned in the notice within the bills, and in 12

hours elsewhere; the notice shall be void. f. 35.

And if the copper or other utenfil be locked or fealed down, the officer shall attend to unlock and open the same, after the maker hath given to him 12 hours notice if within the limits of the head office in London, and elsewhere 24 hours notice, of fuch his intention. And if by any contrivance fuch maker shall open any copper, pan, utenfil, or pipe, before the fame shall have been opened by the officer; he shall forfeit 201. 5 G. 3. c. 43. J. 15.

And no maker of hard foap shall, upon any pretence of cleaning or washing any copper, pan, or other utenfil, used in boiling of soap, or on any other pretence, presume to light any fire under the same, without first giving such

notice; on pain of 201. 1. 16.

8. Every maker of hard foap shall make use of regular Frames to be square or oblong frames only, for the cleansing or putting made use of in his soap (whether perfect or not perfect) into, when working. taken out of the vessel where it was boiled or prepared; and the bottom, sides, and ends of every such frame shall be 2 inches thick at the least; and such frame shall not exceed 45 inches in length, nor 15 inches in breadth; of which frames he shall give notice in writing at the next office, before he shall use the same; all which said frames shall be marked and numbered by the surveyor or supervisor, at the expence of fuch maker: on pain of forfeiting, for every fuch offence respectively, the sum of 20 l. 5 G. 3. c. 43. f.17.

9. If any stale or rotten soap, or cuttings, be put into Reworking stale the copper or pan, in presence of an officer, to be refreshed soap. or new made; the officer shall make allowance of the duty, and certify the same upon his report. 10 An. c. 19.

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But if it shall be put into any making of soap, without giving to the officer 12 hours notice in writing within the bills, and 24 hours elsewhere; there shall be no allowance made for it. 11 G. c. 30. J. 37.

And if any officer shall falsly pretend that he had such notice when he had not, and make and certify such allowance; he, and also the maker, shall forfeit 10 s. for every pound to certified. J. 38.

But no bard foap (whether perfectly made or not), after the same shall have been cleansed or put into the frame, H 2

thall on any pretence be returned or put again into the copper or other utenfil, for boiling or reworking; and if it shall be for returned, it shall be charged again with the duties. 5 G. 3. c. 43. f. 18.

And the officer shall allow to the maker in his charge, one pound in every ten of such hard soap; which shall be a full compensation for all waste, losses or damages. f. 14.

10. And the maker shall keep scales and weights where he makes his soap, and permit and affist the officer to use

them; on pain of 101. 10 An. c. 19. f. 13.

Officer to charge for materials missing.

Scales and

weights.

of the quantities of oil, tallow, pot-ashes, lime, and other materials proper to be made into soap, that shall be in the maker's possession; and if the officer shall miss any quantity of them, which he had taken account of the last time he was there, and shall not on reasonable demand receive satisfaction what is become of them, the officer may charge him with such quantity of soap, as such materials in his judgment would have made, not exceeding 14 gallons of such ingredients (besides the lees) for every barrel. 10

An. c. 19. J. 14.

Removing foap

12. And no maker shall (on pain of 201.) remove any soap, of which no account hath been taken by the officer, from where it was made, without giving the officer within the bills 24 hours notice, and in other parts two days notice, of his intention to remove the same. 10 An. c. 19. s. 16.

Unfurveyed to be

Concealing.

made, and not surveyed, separate from that which hath been surveyed, for 24 hours after making, within the bills, or two days in any other place; unless it shall have been sooner surveyed; on pain of 51. 10 An. c. 19. s. 17.

14. And if any maker shall conceal any soap or materials; he shall forfeit the same, and also 500 l. 1 G. st. 2.

c. 36. f. 14, 15.

And by the 5 G. 3. c. 43. If the officer shall have cause to suspect, that soap is privately making in any place; or that any soap is concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night (but if in the night, in presence of a constable) to enter into every such place suspected, and to seize and carry away as for seited all such soap as he shall there find so privately

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making, together with all materials then ready or preparing for making of foap, and likewife all fuch foap as they shall find so concealed, together with the boxes or other package: And the person that shall be found privately making foap, or in whose possession such soap shall be found, shall forfeit 100 l. f. 20.

15. The maker within the bills shall monthly, and Entry of foap elsewhere every fix weeks, make entry in writing at the made. next office, of all the foap by him made within the faid month or fix weeks, fetting forth the weight, and what quantity was made at each boiling in the feveral weeks; on pain of 50 l. Which entries shall be on the oath of the maker, or chief workman, according to the best of his knowledge and belief. The faid entry and oath within the bills, to be at the general office, and elsewhere with the collector and supervisor. 10 An. c. 19. s. g.

But no maker shall be obliged to fend further to make

entry, than to the next market town. f. 10.

16. And the measure of soap shall be this; Every Measure of soap. barrel shall contain 256 lb. averdupois: half barrel 128; firkin 64; half firkin 32; besides the weight or tare of And all foap (except hard cake foap, and ball foap, 10 An. c. 26. f. 111.) shall upon making thereof be put by the maker into fuch cask, and none other. 10 An. c. 19. f. 8.

And all foft foap that shall be filled in any other cask less than barrels, half barrels, firkins, and half firkins,

shall be forfeited, and also 51. 12 An. st. 2. c. 9. st. 19.

17. The maker within the bills, shall within four Payment of the weeks, and elsewhere within fix weeks after entry, clear duties. off the duties; on pain of double duty; And no maker, after fuch default in payment, shall fell or deliver out any foap, till he hath paid off his duty; on pain of double value. 10 An. c. 19. J. 11.

18. By the 10 An. c. 19. Any person who shall use Drawback for foap in making of cloths, or other manufactures of sheeps soap used in the or lambs wool only, or manufactures whereof the greatest facture, part of the value of the materials shall be wool; or in finishing the faid manufactures; or preparing the wool for the same; or in whitening new linen in the piece, (or his chief workman) ---- may make proof in writing by affidavit, before the collector or fupervisor, specifying the kinds and quantity of the manufactures, and the days between which, and the places where the same were made, prepared, or whitened, and the quantity and kind of foap confumed therein, and that no allowance for the duty on

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fuch foap hath been made: whereupon the collector shall

repay the duty on such soap. f. 29.

And the said affidavit need not be stamped; and no see shall be taken, except 4 d. for writing the affidavit, on pain of treble damages to the party grieved, with sull costs; to be recovered as the other penalties. f. 30.

And any person making salse assidavit, shall forseit treble value of the allowance; and for the second offence (on conviction in the courts at Westminster) shall suffer as for wilful perjury. f. 31. And the like is enacted by the 12 An. st. 2. c. 9, f. 16, 17, 18, in regard to the addi-

tional duties by that act.

Soap carried coastwife.

19. Cocquets granted for shipping soap, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and fold, and where consigned; and if shipped without such cocquet, the same shall be forfeited, and seized, together with the package. 23 G. 2. c. 21.

1. 29.

Importation and exportation.

20. No foap shall be imported, otherwise than in some package, containing at least 224 pounds of neat soap, and stowed openly in the hold; on pain of being seized and forseited, together with the package, and the master of the vessel to forseit 50 l. 23 G. 2. c. 21. s. 27.

But on information brought against any such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner, in pay-

ment of the forfeiture. 26 G. 2. c. 32. J. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be sound unshipping or unshipped. 23 G. 2. c. 21, f. 28.

Soap that hath paid the duty may be exported; and the duties shall be drawn back. 10 An. c. 19. f. 22, 23, 24. But no drawback shall be allowed on the exportation of any foreign soap imported. 23 G. 2. c. 21. f. 36.

The officers of excise or customs may seize any soap with the package, that shall be found in any vessel, cart, or other carriage; where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported without payment or duty, or that the same has been exported and relanded after repay-

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ment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5 l. for every 100 pounds weight; and also the goods and package shall be forfeited. 23 G. 2. c. 21. s. 31.

And if any person shall knowingly harbour or conceal any soap unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 501. for every hundred weight, together with the goods and package.

23 G. 2. c. 21. f. 32.

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And where any such soap shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in London, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the Royal Exchange, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon shall not be liable to any appeal, or be removed by certiorari. 23 G. 2. c. 21. f. 33.

21. The excise laws shall be in force for managing Power of the these duties; and the penalties (except where it is other-justices. wise herein directed) shall be recovered and mitigated as by the laws of excise, or in the courts at Westminster; and distributed, half to the king, and half to him that shall sue. 10 An. c. 19. s. 26. 11 G. c. 30. s. 39. 24 G.

2. c. 40. J. 33.

22. And where any foap shall be seized for non-pay-Proof to lie on ment of duties, or non-entry, and it shall be disputed the claimer, whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer.

23 G. 2. c. 21. f. 35.

23. And if the party is not fatisfied with any judgment Appeal. I of the justices on the act of 23 G. 2, c. 21. abovementioned, he may appeal to the next quarter fessions (except in the case before mentioned, where no person shall claim

the goods seized). \int . 37.

24. And on information on the said act of the 23 G. 2. Mitigation, the mitigation shall not reduce the penalty to less than a sourth part, over and above the costs to be allowed. \int . 38.

H 4

25. And

Utenfils liable.

25. And all foap, materials, and utenfils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 An. c. 19. s. 20.

XIV. Spirituous liquors.

So far as running of brandy and other spirituous liquors falleth in with the running of other uncustomed goods; see the first part of this title concerning the Customs in general.

Duty on impor-

1. By the feveral acts an excise is laid on every gallon of spirituous liquors imported (over and above the customs) as follows; viz.

Single brandy, spirits or aqua vitæ, 4 s. 8 d. Double

brandy, spirits, or aqua vitæ, 8 s. 8 d.

Which shall be raised as the duties on other exciseable liquors. 12 C, 2. c, 23, 12 C, 2. c, 24. 4 & 5 W. c. 3. 4 An. c. 6. 6 G. 2. c. 17.

Arrack from the British colonies in the East Indies, the

fame as for brandy and foreign spirits imported.

And by the 32 G. 2. c. 10. there shall be paid an additional duty of 12d. in the pound, according to the value in the book of rates, on all foreign brandy and spirits imported (except rum, of the produce of the British sugar plantations.) f. 1.

plantations.) f. 1.

And by the 33 G. 2. c. 9. over and above all other duties, there shall be paid an additional excise duty of 1 s. for every gallon of single brandy spirits, or aqua vitæ, imported; and of 2 s. for every gallon of brandy spirits, or aqua vitæ above proof, commonly called double bran-

dy, imported. f. 8, 9.

Officers may take tamples on thipboard,

2: To enable the gagers the better to ascertain the proof of all foreign imported liquors liable to the duties of excise; it shall be lawful for the gagers or other officers of excise, at any time before the gaging, to take a sample not exceeding half a pint, out of each cask or other package containing foreign spirituous liquors imported, without paying any thing for the same. 32 G. 2. c. 29.

Landing without duty paid.

3. And if any person shall land any French brandy, before the duty be paid or secured, or without licence from the proper officer so to do; he, and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value, 1 An. st. 2.

And thereat revenue

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And if any officer of the cuftoms or excise shall connive thereat; he shall be incapable to hold any office in the revenue, and forfeit 500 l. f. 2.

4. And the officers of excise may go on board any ship Excise officers or vessel, and fearch in like manner as the officers of the may go on board, customs may do, for any exciseable liquors, and seize all fuch as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the

casks and other package. II G. c. 30. f. I.

5. And if any officer of the excise have cause to suspect, Warrant to that any foreign spirits shall be fraudulently concealed in fearch. any place, entred or not entred, if it is within the bills of mortality, then on oath made before two commissioners, if elsewhere, before one justice, where he suspects them to be concealed, fetting forth the ground of his fuspicion; he or they may by special warrant authorize such officer by day or night, but if in the night in presence of a conftable, to enter, feize, and carry away the same as forfeited, together with the casks or vessels: and if any perfon shall obstruct such officer, he shall forfeit 100 l. 11 G. c. 30. f. 2.

6. And by a general clause in the 8 G. c. 18. All Who only may brandy, arrack, rum, spirits, and strong waters, British or foreign, and all foreign exciseable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or persons deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, and

no other person. f. 24.

7. And if any person shall obstruct any officer of the Obstructing the customs or excise, in seizing or securing any of the said officer. liquors, or indeavour to rescue them after seizure, or shall after feizure stave, or otherwise damage any cask, or ves-

sel; he shall forfeit 401. 8 G. c. 18. f. 25.

8. But no person shall be intitled to any reward given Notice to be on fuch feizure, unless he give notice to the next officer given of feizure, of excise, or to the supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be afterwards removed without a permit from fuch officer of excise, on pain of being reseized. 12 G. c. 28. f. 6.

9. If any foreign brandy, arrack, rum, strong waters, In what ships to or spirits of any kind shall be imported, in any ship or be imported. veffel of 100 tons burden or under (except only for the ule of the feamen, not exceeding two gallons each); fuch

veffel with her tackle, and also the spirits, shall be for-

feited. 5 G. 3. c. 43. f. 27.

And to prevent clandestine landing of spirits from Ireland; if any brandy, rum, strong waters, or other spirits shall be entred or shipped for exportation from Ireland, to any place not within the same kingdom, in any vessel under the burden of 100 tons (except only for the use of the seamen, not exceeding two gallons each); the said vessel with the tackle and furniture, and also all such spirits, shall be forfeited. s. 30.

Ships hovering mear the coaft-

10. And where any vessel of 50 tons or under, being in part or fully laden with brandy, shall be at anchor, or within two leagues from the shore, and not proceeding on her voyage, wind and weather permitting; the commander of any man of war or armed sloop appointed for the guard of the coast, or the commander of any sloop or vessel in the service of the customs, may compel the master to come into port; and the same shall be liable in all cases as ships hovering within the limits of any port. 6 G.

And if the master, purser, or other person having charge of the vessel, shall suffer any brandy (or other uncustomed goods) to be put out of the ship into any hoy; lighter, boat, or bottom, to be laid on land; he shall, besides the other penalties, suffer six months imprisonment.

6 G. c. 21. / 32.

And by the 9 G. 2. c. 35. Where any vessel coming from foreign parts, and having on board any foreign brandy or spirits, in casks under six gallons (except only for the use of the seamen, not exceeding two gallons each) shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such spirits, with the casks and other package, or the value thereof, shall be forseited (whether bulk shall have been broken or not); and the same may be seized, or the value thereof sued for by the officers. s. 22. And if such vessel do not exceed the burden of 50 tons, the said vessel also, together with her tackle and surniture, shall be forseited. 3 G. 3. c. 22. s. 5.

In what cafes to

11. No brandy shall be imported in any vessel not containing 60 gallons at the least; on pain of forfeiting the

fame, or the value. 4 W. c. 5. f. 8.

And no geneva, or rum, shall be imported in any vessel or cask, not containing 60 gallons at the least (except only for the use of the seamen, not exceeding two gallons each); on pain of forseiture. 5 G. 3. c. 43. s. 28.

Provided

Protion of being American without and by per, and be accountable.

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Provided, that if it shall be made appear to the satisfaction of the commissioners of the customs, that any rum, being the produce of any of his majesty's dominions in America, shall be imported from thence in small casks, without fraud or concealment, either for the use of the mafter in the voyage, or for the private use of merchants or traders importing the same, or designed as presents, and not by way of merchandize; they may, if they think proper, admit fuch rum to an entry, and cause the duties to

be accepted instead of the forfeiture. f. 29.

12. All rum or spirits of the growth or manufacture of Rum to be warethe British sugar colonies (imported directly from thence) housed on imon entry made (within 30 days after report made by the portation. mafter or purfer of the contents and loading of the ship, 31 G. 2. c. 36. f. 5, 6.) and before payment of the duty, may be landed and put into warehouses, provided at the charge of the proprietor or importer, and approved of by the commissioners; the proprietor or importer first giving bond for payment of the duty, if it be fold within fix months; and if it be not fold in that time, then to pay the duty at the end of fix months, according to the gage taken at the time of landing and lodging in the warehouse. 15 G. 2. c. 25. J. I.

And if any rum or spirits be landed, before entry at the custom house and with the collector of excise, and the duties fecured, or without warrant for landing, or without the presence of an excise officer; the same shall be

forfeited, or the value thereof. J. 3.

And before it be landed and lodged in the warehouse, a mark shall be set upon every cask, mentioning the quantity, and the proprietor or importer; and the warehouse keeper and excise officer shall each keep a book, and enter the particulars carried in or out, and when, and for whole use delivered; and every fix months, or oftner if required, transmit an account thereof in writing, and on oath, to the commissioners of excise, who shall in one month examine the same: and if any rum or spirits shall be delivered contrary to this act, the warehouse keeper or officer offending shall be disabled from holding any publick employment, and forfeit rool. f. 4.

And the rum or spirits may be delivered out of the warehouse, on payment of the excise, and on producing to the warehouse keeper, and the excise officer attending the warehouse, a certificate of such payment; and the warehouse keeper shall give a permit therewith, signed by the

excite officer, to prevent the feizing thereof. J. 5.

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But no proprietor, importer, or buyer, shall receive out of the warehouse less than one vessel of 20 gallons, unless I

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And the proprietor or importer may fix a lock on the warehouse and keep the key; and the excise officer may put on another, and keep the key; and the proprietor or importer may in presence of the warehouse keeper, or excife officer, at all reasonable times, view, and take out as aforesaid. s. 7.

And if any rum or spirits remain in the warehouse above fix months, without paying the duty, the commissioners of excise may sell them by auction, and pay themselves the duty and charges, rendring the overplus to the proprietor

or importer. f. q.

Duty on home Spirits.

13. For every gallon of spirits made of imported wine or cyder, shall be paid in the whole the sum of 1 s. 3d.

For every gallon of strong waters or aqua vitæ, made of

any other materials, 7 1 d.

If from foreign or from home materials mixed with foreign; then a further duty of 6d.

If from brewers wash or tilts, 5 1 d.

If from drink brewed of malted corn, 5 1 d.

If from other British materials, or any mixture therewith, 5d.

For every gallon of low wines or spirits of the first ex-

traction, made from foreign materials, 1s. 7d.

From brewers wash or tilts, 1 s. 4d.

From drink of malt, 5d.

From any other English materials, 7 d.

But low wines or spirits of the first extraction drawn from melasses only, shall be liable only to 1 s. a gallon; and all spirits from low wines, or spirits of the first extraction, drawn from melasses only, shall be chargeable with 6 d. a gallon. 19 G. 2. c. 12. J. 37.

Note; All spirits drawn by any distiller from any mixture of spirits with any kind of wash or other liquor (except common water) shall be deemed low wines, and

chargeable with the duties imposed on low wines drawn from foreign materials. 10 & 11 W. c. 4. f. 9.

Moreover, by the 33 G. 2. c. 9. an additional duty is

For every gallon of low wines, or spirits of the first extraction, made from any fort of drink or wash, brewed or made from any fort of malt or corn, or from brewers wash or tilts, or any mixture with brewers wash or tilts, 5 d. 1. 2.

For

For every gallon of strong waters or aqua vitæ, made for sale, of the materials aforesaid, or any of them, 1s. 3d. f. 3.

For every gallon of low wines or spirits of the first extraction, made from any foreign or imported materials, or any mixture therewith, 1 s. 3d. f. 4.

For every gallon of spirits, made from any foreign, or imported materials, or any mixture therewith, 8d. s.

For every gallon of low wines or spirits of the first extraction made from cyder or any kind of British materials, except those before mentioned, or any mixture therewith, 6 \(\frac{1}{4} \) d. \(\frac{1}{6} \).

For every gallon of spirits, made for sale, from cyder or any kind of British materials, except those before mentioned, 1s. 13 d. s. 7.

And by the 2 G. 3. c. 5. There shall further be paid, for spirituous liquors made for home consumption, or imported (not being the produce of the *British* colonies), these several additional duties:

For every gallon of low wines or spirits of the first extraction, made from any fort of drink or wash brewed, or made from any fort of malt or corn, or from brewer's wash or tilts, or any mixture with brewer's wash or tilts, I d.

For every gallon of strong waters or aqua vitæ, made for sale, of the materials aforesaid or any of them, 3 d.

For every gallon of low wines or spirits of the first extraction, made from any foreign or imported materials, or any mixture therewith, 3 d.

For every gallon of spirits, made from any foreign or

imported materials, or any mixture therewith, 2d.

For every gallon of low wines or spirits of the first extraction, made from cyder, or any kind of British materials (except those before mentioned) or any mixture therewith, 1 \(\frac{3}{4}\) d.

For every gallon of spirits made for sale, from cyder, or any kind of British materials (except those before men-

tioned), 2 d.

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For every gallon of fingle brandy spirits or aqua vitæ imported (not being the produce of the British colonies), 6d.

For every gallon of brandy spirits or aqua vitæ above proof, commonly called double brandy, imported, not being the produce of the *British* colonies, 1 s. s. s. s.

Note, Spirits made for exportation shall be duty free (as will appear afterwards).

n or other materials prapared for distillations to

14. Any

Concerning di-Rillers.

14. Any person who shall set up any work or office for that purpole, and thereof shall give notice to the commisfioners of excise in ten days, may distill for sale, or to be retailed, any low wines or spirits from drink brewed from malted corn or cyder, and rectify and refine any fuch spirits of their own making only, paying duties and subject to the same regulations as other distillers. 8 & 9 W. c. 19. f. 13.

And by the 12 An. ft. 2. c. 3. Any person may distill brandy or spirits made from British malt or cyder, altho' he hath not ferved feven years apprenticeship.

And by the 9 G. 2. c. 23. Any person who hath exercifed the business of distillation for seven years, or hath ferved, or on Mar. 25. 1736. was ferving an apprenticeship in the same, may follow any other trade or business in any city, town, or place. f. 21.

And by the 2 G. 3. c. 5. Every person who shall fell or deal in any liquors which are chargeable with any duty of excife, and who shall also make or distill any spirits, shall be deemed a common distiller for sale, and liable to

the furvey and duties.

Size of the stills.

15. But no person who shall make or rectify any spirits for fale, or who shall fell or deal in any fort of spirituous liquors, shall have any still or number of stills, unless such still if a single one, or such stills taken together if more than one, shall contain at the least 100 gallons; on pain to forfeit for every fuch still 1001. And fuch ftills as shall contain separately less than 100 gallons, shall be all placed in one room or workhouse; on pain to forfeit for every fuch still not so placed, 1001. 2 G. 3.

Notice of houses,

16. No common distiller or maker of low wines, spitills, and veffels, rits, or ftrong waters, for fale, shall fet up any tun, cask, washbatch, copper, still, or other vessel, for making or keeping any worts, wash, low wines spirits, or strong waters, nor alter nor enlarge the same, nor have any of them private or concealed, or any private warehouse, storehouse, cellar, or other place for making or keeping any the faid liquors, without first giving notice at the next office of excise; on pain of 201, and he in whose occupation any of the same shall be, shall forfeit 501. 8 & 9 W. c. 19. J. 10.

And if any officer of excise shall have cause to suspect any fuch private still, back, or other vessel, spirits, low wines, wash or other materials prepared for distillation, to of his fu of a con to fuch fulpecte detain claimed the nex days, th or othe fel shal and ot J. 7. forfeitu 1. 23.

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be fet up or kept in any place, and shall make affidavit before a justice of the peace, and therein declare the grounds of his fuspicion; he may, in the day time, and in presence of a constable, by warrant from such justice to be directed to fuch officer break open the door or any part of fuch fuspected house or place, and enter and seize the same, and detain them there; and if they shall not in 20 days be claimed by the owner, they shall be forfeited, and fold at the next general day of fale; and if they be claimed in 20 days, the person claiming shall forfeit for every warehouse or other place, in which any fuch still, back, or other veffel shall be found, and also for every such still, back, and other vessel found therein, 2001. 10 & 11 W. c. 4. 1.7. And by the 10 & 11 W. c. 21. he shall incur this forfeiture, whether he shall make any fuch claim or not.

But if on breaking open any fuch door or house, no fuch private back, still, or other vessel, spirits, low wines, wash, or other materials for distillation, shall be found, the officer shall make good the house or place so broken up, or make fatisfaction to the owner to be adjudged by the two next justices (12.); or the party injured may bring his action for the damages; and the same shall be paid by the commissioners out of the revenue of excise; and if any person shall obstruct such officer, he shall for-

feit 2001. 10 & 11 W. c. 4. f. 8.

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17. Every distiller shall ten days before he distills or Vessels to be makes any spirituous liquors, make entry at the next of- marked. fice of excise, of every still and other vessel which he shall make use of for brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, spirits, or ftrong waters; and also of the vessels used for brewing or keeping of the after runnings or feints from the second extraction (which last mentioned vessels shall not at any one time exceed two in number) and also of all such new utenfils as they shall make use of for the purpofes aforefaid, on pain of 501. for every fuch still or other vessel, used and not entred: And the distiller shall thew to the officer every still or other vessel entred, and the officer shall mark the same with a particular and durable mark; and every veffel used by such distiller without being so shewn or marked, shall be deemed a vessel or utenfil of which no entry has been made; and if any person shall rub out or deface such mark, he shall forfeit 201. 24 G. 2. c. 40. f. 22.

Private cocks and pipes,

18. No distiller shall have any private pipe or stop cock, or other conveyance, by which any wash or other liquors fit for distillation may be conveyed from one back or vessel to another, or from any fuch back or vessel to his still, or into any other place, nor shall have any hole in any back or washbatch, by which any wash or other liquor fit for distillation may be conveyed into or out of the same; on

pain of 1001. 10 & 11 W. c. 4. f. 3.

And the excise officer in the day time, and in presence of a constable, on request made and cause declared, may break up the ground in any distilling house, or the ground near adjoining, or any wall, partition, or other place, to fearch; and on finding fuch pipe or other conveyance, may break up the ground, house, wall, partition, or other place, thro' or into which any fuch pipe or other conveyance shall lead, and may break or cut any such pipe or other conveyance, and may turn any cock to try whether fuch pipe may convey any wash or other liquor. /. 4.

And if no fuch pipe or private conveyance be found, the officer shall make good the ground, wall, house, or other place, or make reasonable satisfaction to the owner, to be adjudged by the two next justices (12.) or the party injured may bring his action for damages; the fame to be paid by the commissioners out of the revenue of excife. And if any person obstruct such officer, he shall

forfeit 1001. f. 5.

But any distiller may use any pipe, stop cock, or other conveyance above ground, in open view from one end to the other, for letting his wash out of the coolers into his backs or washbatches, and for conveying the wash or worts, out of the back or washbatch into the still.

f. 6.

Notice of taking in materials.

19. The diffiller, within the bills, shall 24 hours at least, and elsewhere 48 hours, before he receive any quantity of wine, cyder, fugar, water, or any kind of fermented wash, into his custody, give notice to the officer of excise, of the quantity and species, and when he intends to receive the same; on pain of 50 l. 24 G. 2. c. 40.

And by the yearly malt acts, every diffiller who shall receive any quantity of cyder or perry into his custody, shall give notice in writing to the officer under whose furvey he shall reside, 48 hours before he shall begin to put any of the fame into the still, to be drawn into low wines or spirits; and if he shall not give such notice, or shall

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20. No distiller shall begin to charge his still, with wash, Notice of beginspirits, or other materials, without giving fix hours notice to the officer of the division, unless at such times as are herein after mentioned, that is to fay, from Sep. 29, to Mar. 25, yearly, between the hours of five in the morning and eight in the evening; and from Mar. 25, to Sep. 29, yearly, between three in the morning and nine in the evening: And if he shall not begin to charge his still at the time mentioned in fuch notice, or within one hour after, the notice shall be void; and he shall be obliged to give another like notice before he begins: And if he shall begin to charge his still (except within the respective times aforefaid) without having given fuch notice; he shall forfeit 1001. 33 G. 2. c. 9. f. 22.

21. If any distiller, in preparing his grift for wash, in What proportion order for distillation, shall use more wheat, than in the use. proportion of one quarter of wheat to two quarters of any other grain; he shall forfeit 501. 33 G. 2. c. 9.

1. 23.

22. The excise officers by day or by night (but if in the Officer to enter night, in presence of a constable) may enter into all houses and survey. and places made use of by distillers or dealers in the said liquors, and by tafting, gaging, or otherwise, may take an account of the quantity and quality; and if such perfon shall obstruct the officer, he shall forfeit 501. 6 G. c.

21. J. 14.

23. And the officer may take a sample of the low wines Officer may take or spirits, and of the feints and spent wash, paying for such a sample in the working. fpirits or low wines after the rate of 10s. a gallon, and for the feints and spent wash I s. a gallon; and if any distiller, his workman or fervant, shall refuse to permit him to take fuch famples, or shall obstruct him in taking thereof, he shall forfeit 501. 24 G. 2. c. 40. J. 23.

24. If the diffiller or maker shall conceal any the said Concealing from liquors from fight of the gager, he shall forfeit 5 s. a gallon. the gager.

3 W. c. 15. J. 2.

25. The officer may keep an account of the feveral forts officer to charge of wash which shall be found by him in the hands of a di- milling. ftiller, and upon any decrease of such wash brewed or made from malted corn or corn unmalted, may charge fuch distiller with fo much low wines or spirits of the first extraction as one fourth part of the same wash so decreased shall amount unto; and also with so much proof spirits or spirits of the second extraction, as three fifth parts of VOL. II.

the faid low wines so charged shall amount unto: and also upon any decrease of wash made from cyder or perry, may charge fuch distiller upon whom such decrease shall be found, with fo much low wines or spirits of the first extraction, as one fifth part of the same wash so decreased shall amount unto; and likewise with so much proof spirits, or spirits of the second extraction, as one half part of the same low wides or spirits of the second extraction shall amount unto. 4 An. c. 12. f. 4.

Carrying out of the fill house,

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26. No distiller shall deliver or carry out any low wines, spirits, or aqua vitæ, to any of their customers, in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from Sep. 29, to Mar. 25, yearly, between five in the morning and eight in the evening, and from Mar. 25, to Sep. 29, yearly, between three in the morning and nine in the evening; on pain of

7 8 8 W. c. 30. 1.15.

27. Whereas till of late the importers or proprietors of foreign spirituous liquors, or their factors or agents, were permitted to take famples and land the fame without duty paid, whereby they were enabled and did for the most part fell fuch foreign spirituous liquors whilst on shipboard; and whereas for some time last past, such permission hath been refused, which hath proved a great inconvenience to the faid trade; it is enacted, that it shall be lawful for the importers or proprietors of fuch foreign spirituous liquors, their factors or agents, to take, in the presence of a gager or other excise officer, a sample or samples, not exceeding half a pint in the whole, out of every cask or other package, whilft the same shall be on shipboard, and before landing, without paying any duty for the same. 32 G. 2. c, 29.

Retailers houses to be entred.

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28. Every person who shall retail less than two gallons, fhall ten days before make entry in writing of all warehouses, shops, cellars, or other places by him intended to be used, at the next excise office; and of all spirituous liquors therein; on pain of 20 l. for every place, and 40 s. for every gallon not entred, and also the liquors and casks.

9 G. 2. c. 23. J. 7.

29. And no spirituous liquors shall be brought into any fuch warehouse or other place, without first giving notice to the officer of excise; and leaving with him an authentic certificate, that all the duties are paid, or that they have been condemned as forfeited, and expressing the quantity and quality, the name of the feller, and where the duties

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were paid, of the liquors condemned; on pain of 201. and the liquors and casks. QG. 2. c. 23. f. 7.

30. No foreign brandy or spirits, altho' under one gallon Permit on bringshall be received into the custody of any retailer, without ing in. a permit fignifying that the duties were paid, or that it had been condemned; on pain of forfeiting the same, and the veffel. 8 G. c. 18. f. 13.

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31. All dealers in foreign brandy or spirits, who shall re- British to be kept ceive into their custody British spirits, shall keep the same seign spirits, in separate cellars or other places, from their foreign brandy or spirits; on pain of 10s. for every gallon of British spirits found in the same place with the foreign spirits, together with the casks in which the said British spirits Thall be found. 8 G. c. 18. f. 11.

32. It shall be lawful for the officers of excise, to take Officers may 32. It shall be lawful for the omicers of excite, to take famples in famples, not exceeding half a pint in the whole, out of the she por wareeach cask of other package containing foreign spirituous house. liquors, in any shop, warehouse, or other place, belonging to any dealer in the same; paying for such sample (if demanded) according to the market price liquor of the like quality shall be fold for at the time of such sample taken, 32 G. 2. 2200 f. 2. 4 1 data and at the second of

33. No retailer shall make any increase of the liquors, Retailer increaafter they have been taken account of by the officer, by fing the liquors. any private addition thereto of water or other liquor; on pain of 40% a gallon, and the liquors fo mixed shall be seized and forfeited. 9 G. 2. c. 23. s. 8.

And if the officer of excise shall find any increase of foreign spirits, over and above the quantity which he found at any dealer's on the last survey, such increase shall be deemed to be made by foreign spirits for which no duty was paid; and so much as shall be found increased, shall together with the cask be forfeited, unless the owner make it appear, that the increase was made by mixing therewith in the presence of the officer of the division, some of his flock of British spirits whereof the officer had taken an account, or by foreign spirits brought with a permit, or that it had been condemned and brought in on due notice given to the officer: 8 G. c. 18. f. 12. 20 and printed the

34. The officers at all times hy day or night (but if in Retailer conthe night, in presence of a constable, oath being first made cealing. before a justice dwelling near of a probable cause of sufpecting a concealment) may enter into all fuch warehouses, thops, or other places, and by tasting, gaging, or otherwife, take an account of the quantity and quality; and if

None to be fold

but in entred

places.

any fuch retailer shall hinder the officer, he shall forfeit 50 l. 9 G. 2. c. 23. f. 9.

35. And no fuch liquors shall be fold, but in such warehouse, shop, cellar, or other place, so entred; on pain of 40 s. a gallon. 6 G. c. 21. 6 15. de maiding dianag s

And by the 11 G. c. 30. No arrack, whether British or foreign, shall be offered to sale, either by wholesale or retail, but in an entred place; on pain of forfeiting the fame, with the casks or other vessels, besides the faid penalty of 40 s. a gallon . Je 3. 1 solio to sealles attach in

36. Every person who shall have in his custody above 63 gallons, shall be deemed a seller and dealer in such li-

quors. 6 G. c. 21. . f. 18. de ve ni estas adt di v talis

37. No person shall retail any distilled spirituous or firong waters, mixed or unmixed, without a licence taken out ten days before, for which he shall pay 40s. yearly; if within the bills, from two commissioners of excise; elsewhere, from the collectors and supervisors within their respective districts. 16 G. 2. c. 8. f. 8. 24 Gra. a 40. f. 9 ing select a to ge milesooch belinn

And every person who shall retail spirituous liquors mixed or unmixed, to be drank in any quantity whatfoever, in any place to him belonging; or shall retail or fend the fame abroad in less quantity than two gallons, shall be deemed a retailer. 17 G. 2. c. 17. f. 20.

38. And no fuch licence shall be granted, except to fuch persons only who keep taverns, victualling houses, inns, coffee-houses, or alchouses; and all other licences shall be void; and if any licensed person shall exercise the trade of a diffiller, grocer, or chandler, or keep a brandy shop for fale of spirituous liquors, the licence shall be void. 17 G. 2. c. 17. frig. to old de ded a mont of Lac ;

And no licence shall be granted within the limits of the head office of excise in London, but to such as occupy tenements of 10 l. a year, and pay parish rates for the same; or in places where the occupiers of houses are not rated to the church and poor, then to fuch persons as pay rent of 12 l. a year, and not otherwise; nor to persons in any other part of the kingdom, but fuch as pay to the church and poor; And no licence shall be of any avail longer than he shall be so qualified. 246.2. c. 40. f. 12. 26 G. 21 6.113.10f. gone eldedorg a lo reca

To be first licen- 390 And such persons also shall first be licensed to sell ale or spirituous liquors, by two or more justices of the peace: 16G.2. c. 8, f. 11,

Who fhall be deemed a feller and dealer.

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And the juffices of the peace, and other officers, shall have the fame jurisdiction over such retailers of spirituous liquors, as they have over alchousekeepers. 12 & 13 W. 6. 11. f. 18. 2 G. 2. c. 28. f. 10.

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40. And no licence shall impower any person to fell To be licensed spirituous liquors in any place, except in the house or places only where they thereto belonging, wherein they shall inhabit at the time of granting the licence. 17 G. 2. c. 17. f. 22.

1. Persons retailing without licence shall forfeit 10 l. Penalty of feland on nonpayment when demanded, one justice on oath ling without liof such neglect shall commit the offender to the house of correction, to be kept to hard labour for two months, or till paid. 16 G. 2. 1. 8. 1. 9. heard and determined

And the faid penalty shall in no case be mitigated below the sum of 51. 24 G. 2. c. 40. f. 11. 26 G. 2. c. 13. 1. 8.

And the justices may, if they think proper, instead of levying the penalty commit the offender to the house of correction, to be kept to hard labour for two months; and the person so committed shall before his discharge, be stript naked from the middle upwards, and whipt until his body be bloody. 17 G. 2. c. 17. f. 18.

And also all the diffilled spirituous liquors that shall be then, or at any time within fix months after conviction, found in his cuftody, house, or other place occupied therewith, whether it be in his own occupation or not, shall by warrant of the faid commissioners, or of one justice, be feized, and staved, or otherwise destroyed: And any peace or parish officer, authorized by such warrant, may at any time in fix months after conviction enter fuch places, and break open doors, if not opened on demand. And if any person shall offend again in like manner, the commissioners or justices before whom he shall be convicted of such subfequent offence, may inflict the penalties by any former law to be inflicted for fuch offence, and also commit the offender to the house of correction, to be kept to hard labour not exceeding three months, and also (if they shall think fit) order him to be whipt. And being convicted of a third offence, it shall be deemed felony, and the fessions may transport him for any time not exceeding seven years. 24 (6 2; c. 40:1) 13.0 es w obesto on staday saitu and

And the conviction shall be in this form, or to the like

And an energy total and detain himsign from Middlesex. A. B. is convicted on his own confession (or on the oath of A. W. of baving fold strong waters in the parish of - in this country, on the - day of without

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without being duly licenfed thereto: This is the first, second, or third conviction. Given under my band and seal, &c.

And the commissioners, or one justice, on oath of any offence against this act, or any other act for regulating the retailing of spirituous liquors, may grant a warrant to any of the peace officers, or other parish officers, to enter and search the houses and other places, where the offence shall be sworn to have been committed, or in the occupation of the persons sworn to be guilty thereof, and they may break open the doors if not opened on demand, and seize all such distilled spirituous liquors as they shall there find, and detain the same, till the offence shall be heard and determined; and if the offender be convicted, the liquors shall be forthwith staved; and if he be not convicted, the same shall be restored. 24 G. 2. 6. 40.

Hawking in the freets.

42. No person shall hawk, scll, or expose to sale any spirituous liquors about the streets, highways, or fields, in any wheel-barrow or balket, or on the water in any boat, or in any other manner; or shall fell or expose the fame to fale, on any bulk, stall or shed, or any other place other than as above is allowed; on pain of to l. And one justice on his own view, or confession, or proof of one witness, may convict him; whereupon he shall immediately pay the 101, to the churchwardens and overfeers: and on refusal or neglect, the justice shall commit him to the house of correction to be kept to hard labour for two months to be reckoned from the day of commitment; and he shall not be discharged till he pay the sum, or till the two months be expired. If there is no informer, it shall be wholly to the use of the poor; otherwife half to the informer, and half to the poor. 9 G. 2. c. 23. - f. 13.

And moreover, he shall before his discharge from the house of correction, be stripped naked from the middle upwards, and whipt until his body be bloody. 10 G. 2.

c. 17. f. 9.

And any one justice, on information on oath against fuch person, may (without any previous summons) issue his warrant for apprehending and bringing him before some justice where the offence was committed. 11 G. 2. c. 26. s. 4.

And any person may seize and detain him, until he may give notice to the constable, churchwarden, overseer, or other peace or parish officer; who shall carry the person so seized and detained, before a justice of the peace,

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who shall proceed thereon as in case where he is brought

by the constable. 11 G. 2. c. 26. f. 5.

M. 13 G. 2. K. and Crofts. A woman was convicted for felling gin, and it appearing that she was a seme covert, it was objected that fhe could not be convicted, for as she could make no contract, it must be taken to be her husband's sale; or if she could be convicted, the husband ought to have been joined for conformity. It was answered, that where the crime is of fuch a nature, as can be committed by her alone, the may be profecuted without her husband; which being a proceeding grounded merely on the breach of the law, he shall not be included, unless privy: In this case there may be imprisonment and whipping. And by the court, We think the conviction is right; for this is not like the cases that found only in damages. The wife may be convicted for recufancy. And though she cannot have the benefit of the contract, yet she as well as a servant may do the act of vending. Befides, there would be a plain way to evade the act, if femes covert could not be convicted. Str. 1121.

43. If any less quantity than two gallons shall be fold Occupier of the or delivered in any clandestine manner, to any person, in house shall be any house, outhouse, stable, barn, shed, or other place, part of or belonging to any house or farm; in such case, the occupier or occupiers (if more than one) confenting thereto, shall be deemed retailers, and forfeit as felling

without licence. 11 G. 2. c. 26. f. 1.

44. Persons giving away spirituous liquors, to servants Persons giving or apprentices fetching goods from their shops, shall be away spirituous deemed retailers. 9 G. 2. c. 23. f. 16.

45. If any mafter or other person shall agree to pay any Paying wages workman, fervant, or labourer, or other person imployed in springous by him or for him, fo much money for wages, and fo much spirituous liquors, as together with the money shall amount to the value of the wages usually paid in like cases; or shall set off or deduct any part of the wages, for any spirituous liquors; he shall be deemed a retailer, and forfeit 201. over and above the other penalties, and fuch fervant shall be intitled to his whole wages. 9 G. 2. c. 23. f. 11.

46. But nothing herein shall extend to physicians or Apothecaries fel apothecaries felling the same as medicines. 9 G. 2, c. 23. liquors.

J. 12. 16 G. 2. c. 8. f. 12.

47. No licence shall be granted for retailing of any spi- Selling in gaols rituous liquors, within any gaol, prison, house of corrector workhouses. tion, workhouse, or house of entertainment for parish

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poor; and if any keeper of such prison or house shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors or strong waters to be sold, used, lent, or given away in any such gaols or houses, or brought into the same, except such as shall be prescribed by the direction of a regular physician, surgeon, or apothecary, from the shop of some regular apothecary,—he shall forseit 100 l. half to the king, and half (with sull costs) to him who shall sue in the courts at Westminster. And if any such person shall offend again in like manner, and be a second time convicted; he shall forseit his office. 24 G. 2. c. 40. s. 17.

And any justice, on information on oath that spirituous liquors or strong waters are kept and disposed of in any such prison or other place, may enter and search, or impower by warrant any constable to search for and seize all such liquors as shall be found (except such as are directed to be used medicinally) and to staye and destroy the

fame. f. 18.

And if any person shall bring, or indeavour to bring any such liquors (except in the way of medicine as before mentioned) into any such gaol or other place, the gaoler or his servants may apprehend and carry such offender before any justice of the peace, who shall hear and determine such offence in a summary way; and if by the oath of one witness, or otherwise, such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding three months, unless he shall immediately pay down such fine not exceeding 201. and not less than 101. as the justice shall impose, to be paid half to the informer, and half to the poor of such prison or workhouse. f. 19.

And the gaoler, keeper, master, or other officer, shall procure a copy of the three preceding clauses, to be printed or fairly written, and hung up in one of the most publick places of his gaol, house of correction, or workhouse aforesaid, and renew the same from time to time, so that it be always kept fair and legible; on pain of 40 s. by warrant of one justice, on oath of one witness. And any justice may enter and demand a fight of it, and if it shall not be shewn to him hung up in some publick place fair and legible; he shall immediately convict such person, and so from time to time as often as he shall think fit: half to be to the informer, and half (or the whole if there be no informer) to the poor of such gaol or other place.

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48. No person shall recover any debt on account of Recovering debt spirituous liquors, unless it shall bona fide have been con- for spirituous liquors. tracted at one time to the amount of 20 s. or upwards; nor shall any particular article in any account be allowed, where the liquors delivered at one time, shall not amount to the full value of 20 s. and where no part of the liquors fo fold shall be agreed to be returned; and if any retailer, with or without a licence, shall take any pawn by way of fecurity for payment of any money for fuch liquors, he shall forfeit 40s. by warrant of one justice, half to the poor, and half to the informer; and the owner shall have fuch remedy for recovering fuch pawn, as if it had never been pledged. 24 G. 2. c. 40. f. 16.

49. If any diffiller or other person shall knowingly fell Distiller deliveror deliver any diffilled spirituous liquors, that the same retailers, may be unlawfully retailed, or to any unlicensed retailer; he shall forfeit 10 l. and treble value of the liquors, half to the king, and half to him that shall fue in the courts at Westminster. And if any person guilty of retailing such liquors, shall discover the distiller or person who knowingly supplied him therewith, and prosecute him to conviction, he shall be intitled to his share of the penalty, and indemnified against all penalties incurred by him before that time, for felling spirituous liquors without licence.

24 G. 2. c. 40. f. 15.

50. If any persons to the number of five or more, shall Riotously rescuin a tumultuous and riotous manner affemble to rescue any ing offenders, or affaulting inoffenders against any act relating to spirituous liquors, or formers. for licenfing the retailers thereof, or to affault any person who shall have given or is about to give any information against, or shall have discovered or given evidence against, or shall seize or bring to justice any offender; he, his aiders and abettors, shall be guilty of felony, and transported for seven years. 24 G. 2. c. 40. f. 32.

51. Where any fuch liquors shall be fold in any fuch Permit for remoentred place, the officer shall on request of the seller val after sale. (without fee) give the buyer a certificate figned by him, expressing the quantity, the name of the buyer and seller, and that the duty hath been paid, or that it hath been

condemned as forfeited, 6 G. c. 21. f. 16.

And no fuch liquor, exceeding one gallon, shall be carried without such certificate or permit; on pain of forfeiting the same with the casks and vessels. f. 17.

And if any person shall take out a permit, and not remove the liquors accordingly, nor return the permit; he shall forfeit treble value: And if there appears not a suffi-

cient decrease in the stock, to answer the quantity in the permit, the officer may seize so much as will answer the quantity. But no person shall receive a permit, without direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 501, and in default of payment, three months imprisonment, 11 G. a. 30. f. 10.

Selling without a with one.

52. If any person shall offer any spirituous liquors to permit, or pedlars fale, not having a permit; or if any pedlar or other trading person, going from town to town, or other mens houses, and trading either on foot, or with any horse or other cattle, or otherwise, shall offer any such liquors to fale, altho' he have a permit: the person to whom they are offered to fale, may feize and detain fuch liquors, and carry them to the next warehouse belonging to the customs or excise, and bring the person before a justice, to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such liquors may be profecuted in the name of the person who stopped or seized the same, in like manner as if they had been seized by an officer. 9 G. 2. 4. 35. f. 20.

Officer neglecting to feize.

3. When any officer of the customs shall neglect to feize and profecute any veffel, boat, horfes, or other cattle or carriage, forfeited for running of brandy, and shall be convicted thereof on his appearance or default, by oath of one witness, or confession; he shall forfeit 50 l. 6 G. 2. 21 deposit 15 1 for 14 Payment c. 17. /. 10.

Constable neglecting his duty.

54. If any constable or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 G. 2. or to G. 2. herein mentioned; he shall, on conviction by the oath of one witness, forfeit 20 l. 11 G. 2. c. 26. f. 7.

Carrying coaftwife.

55. All low wines or spirits carried coastwife, without a certificate from the officer of excise where they were made, that the duty hath been paid, shall be forfeited, and feized by the officers where they shall be brought in. 36. c. 4. 1. 170 01 2114 1 104 5 112010 10 19 11

Shipped as flores.

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56. By the former acts, it was generally provided, that home fpirits might be exported, and a drawback of the

duties was to be allowed thereupon.

- But by the 6 G. 2. c. 17. for spirits drawn from British corn, there was to be allowed a drawback by the excife officers at the port of shipping, of 41. 18 s. a ton, in full of all drawbacks: Except that from every ton of spirits drawn from barley malt, or other corn, there should be paid by the officers of the customs, when barley is 24 s. a quarter,

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amo pae of or under 11. 10 s. in like manner as for corn exported. f. 7, 8.

And by the 33 G. 2. c. 9. there was to be an additional drawback of 241. 10 s, a ton, on all British made spirits exported; oath being made before two commissioners of excise or justices of the peace, that the duties were paid, and that the same were to be exported for merchandize to

be spent beyond the seas. f. 15.

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And by the said act of the 33 G. 2. c. 9. it is further enacted, that the same drawbacks and allowances shall be made on spirits shipped as flores, to be spent on shipboard, on giving five days notice thereof to the commissioners of exsife or to whom they shall appoint, mentioning therein the destination of the voyage, the tonage of the ship, and the number of mariners intended to be employed; which faid commissioners, or person appointed by them, shall ascertain the quantity of fuch spirits which shall be shipped on board fuch vessel as stores, and the assize and marks of the casks in which such spirits shall be shipped. And on oath being made before one commissioner or justice of the peace, or other person authorized by the commissioners, that the duties are paid, and that the same are to be shipped as stores to be spent in the voyage; and on certificate from the officer of excise where such spirits were shipped, of the quantity to shipped, and that the same were proof spirits, and shipped in the presence of such officer, the duties shall be allowed or paid back. J. 15.

Provided, that no drawback shall be allowed for spirits shipped as stores, in any vessel of less than 100 tons bur-

den. f. 16.

And if any fuch spirits shipped for stores, shall be relanded in Great Britain, Guernsey, Jersey, Alderney, Sark, or Man, unless in case of distress to save the goods from perishing (of which notice shall immediately be given to the proper officer); then, not only all fuch spirits and the calks or other package shall be forfeited, but also the perion who shall bring, or procure such spirits to be relanded, or thall be affifting or otherwise concerned in unshipping the same, or to whose hands the same shall knowingly come after the unshipping, or by whose privity or direction the same shall be relanded, shall forfeit-double the amount of the drawback, and also the casks and other package, together with the vessels and boats, and all the herses or other cattle and carriages whatsoever, made use of in landing, removing, or carrying the fame; which may be feized by any officer of the customs or excise:

Master

Master assisting therein, or conniving thereat, shall (over and above all other penalties) be imprisoned for fix months. And if the package shall be altered at any time after the shipping thereof, and before the arrival of the ship at the place of discharge; the master, or other person taking charge of the veffel, shall forfeit 100 l. f. 18.

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And whereas spirits shipped for stores are frequently concealed from the officers, on pretence of being put underneath other goods; all spirits shipped for stores shall, during the time the vessel shall be in port, be openly stowed and kept, so that the officers may at any time examine the fame; on pain of forfeiting double the duty of all fuch stores which shall not be so stowed and kept, or produced and shown to the officers of excise, according to the rate fuch spirits would have been charged with if made for home confumption. 2 G. 3. c. 5. s. 20.

57. No wash which shall be brewed or made for the

making of low wines in order to extract spirits for expertation, nor any fuch low wines or spirits, shall be chargeable with any duties of excise; and all drawbacks thereupon, whether payable by the commissioners of excise or

customs, shall cease. 2 G. 3. c. 5. s. 6.

Exportation

duty free,

Entry of houses and veffels for making spirits for exportation.

58. Every distiller intending to make or distil spirits for exportation, shall, four days at the least before he shall begin to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation, -make a particular entry at the next office of excise, of every still, copper, ton, washbatch, cask, or other yesfel, which he shall make use of for the brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, or spirits; and also of the casks or vesfels which he shall make use of for the brewing, holding, or keeping of the after-runnings or feints from the fecond extraction which shall from time to time be drawn from every fuch still; and also of every workhouse, stillhouse, storehouse, warehouse, or other place, by him used for the preparing, distilling, or keeping wash, low wines, or spirits; and in such entry shall insert the day when he intends to begin first to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation; and shall afterwards, from time to time, during the continuance of fuch entry, give or leave notice in writing at the faid office of excise, or with the officer for the division, four hours at least before he shall begin any rahalvi

any fuch subsequent brewing or mixing, and shall insert in such notice the hour when he intends to begin; and shall also, from time to time, during the continuance of fuch entry, give or leave notice in writing at the faid office of excise or with the faid officer, four hours at least before any wash is pumped up or otherwise conveyed into the still, and shall insert in such notice the hour when he intends to begin; on pain of 100 l. for every offence. And if after such entry so made, he shall not begin and proceed to brew or mix his materials as aforefaid, on the day mentioned in such entry or within four hours afterwards, or having given fuch notice, shall not begin and proceed in such operations at the hour and time mentioned in such notice, or in two hours afterwards; such notice shall be yoid: and if he shall proceed without fresh entry or notice respectively, he shall forfeit the like sum of 100 h f. 7. of Healt engineers offer of excite:

Provided, that nothing herein shall extend to permit or authorife any distiller to make entry of his intention to make spirits for exportation, whose wash still will not contain 1600 gallons, and the spirit or low wine still

800 gallons. A 8. Sies in walls alt ve awa radio

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Neither shall any distiller be permitted to distill spirits for exportation, altho' he may have made entry as aforefaid, unless he shall actually have distilled into spirits all the wash and low wines in his custody for making of fpirits for home confumption, at least 48 hours before

the day mentioned in fuch entry. id.

Brosk & Provided, that when any distiller shall be defirous of distilling any spirits for home consumption, and shall have actually distilled into spirits all the wash, low wines, and feints in his possession for the making of spirits for exportation, and fuch spirits shall be locked up in the warehouse as herein after is directed; he may withdraw his entry for exportation, and be at liberty to make a fresh and like entry for making spirits for home consumption; and after fix days from fuch entry made, he may begin to brew or mix materials for wash to be distilled into spirits for home consumption: And if he shall begin contrary hereunto, he shall forseit 2001. J. 9.

59. And no wash that shall be brewed or mixed for Manner of mathe extracting of spirits for exportation, shall be pumped king and ware-housing for exup into the still, or otherwise removed from the back or portation. veffel wherein the fame was fermented, but in the prefence of an officer; and fuch diffiller shall run or draw off his low wines immediately from the still into entred

vessels only, and continue them therein, a that the officers may take a true gage of fuch low wines; and fuch diftiller shall provide a proper cask which shall be duly entred and gaged, into which the spirits shall immediately run from the still, which cask shall be sufficient to contain the whole produce of spirits to be extracted from each still when made up to the proper strength such spirits are required to be; and when the whole quantity of spirits shall be collected in such cask from each still, such distiller shall immediately make up such spirits in the presence of the officer, to the strength of one to fix under hydrometer proof: And a true gage of fuch spirits so made up shall then be taken by the officer. And the faid spirits shall immediately afterwards be put into casks, and secured in the presence of the officer in a warehouse to be provided and kept by the distiller, and duly entred at the proper office of excise; which spirits shall be kept there separate from all spirits made for home consumption; and no spirits for home confumption shall be put into the same warehouse; and such warehouse shall be secured under three locks, one to be provided by the distiller, and the other two by the officer of excise at the expence of the distiller; whereof one key to be kept by the distiller, another by the supervisor, and the third by the officer of excise, until the spirits shall be delivered out for rectification, or afterwards for exportation; which warehouse shall be secure to the satisfaction of the supervisor signified under his hand: And if any diffiller for exportation shall act contrary to these directions; or shall obstruct the officer in gaging, or in taking famples, or in trying the proof of the spirits (which gages, samples, and trials of proof the officers shall make as often as the commissioners shall direct, the samples to be returned when the commissioners shall find it expedient to give directions for that purpose); or shall open any of the locks in the absence of the officer, of make any way into fuch warehouse, or remove any part of the partition of it, or make any addition to, or any way alter the fame, without notice to the fupervisor and his consent in writing first had; or shall remove any of the faid spirits from the warehouse, before the same shall be taken out for immediate rectification or exportation; or shall remove or conceal any wash or low wines for making spirits for exportation, or any such spirits, whether raw, or rectified, either before the same are put into the warehouse or afterwards; he shall forfeit 500 l. . IO.

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But this shall not hinder any maker of spirits for exportation, from fending fuch spirits out of his locked warehouse to any other diffiller: provided such maker and distiller give bond in double value of the spirits, and double duty which they would have been liable to if made for home confumption, for the due exportation thereof within three months; and provided leave in writing be obtained from the commissioners; and four hours notice thereof at least be given to the officer, that he may receive the fame into fuch diffiller's stock; and provided such spirits be removed with a proper certificate from an excise officer: And fuch distiller shall thereafter be liable to the fame penalties for breach of directions, as the maker would have been. of. ii. all edy then be taken by

And to prevent diffillers from working in the absence of the officers; every fuch diffiller shall permit the officer to secure the heads of the stills, when the stills are not at work; and also the pumps for charging the stills and emptying the low wine and spirit cask, so as to prevent the same from being used in the absence of the officer; and also to secure the lid or head of the low wine and spirit calks, and the fafe at the end of the worm, to prevent any spirits or low wines from being secreted, whilst the

still is at work. f. 17.

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60. No raw unrectified spirits shall be permitted to be Taking out of exported. And when any diffiller for exportation shall the warehouse be defirous to take any of his fpirits out of the warehouse for rectified, or when rectified, and again description. in order to be rectified, or when rectified, and again deposited in the warehouse, in order to be immediately shipped for exportation, he shall thereof give four hours notice in writing to the supervisor or officer of excise, and shall infert in such notice the day and hour when he intends fo to do, and also the quantity and quality of spirits he defires to take out, and whether fuch spirits are raw or rectified, and out of what warehouse, and whether the same are for rectification and by whom, or for immediate exportation, or to be fent coastways, and to whom and to what port, and whether for merchandize or stores: And the supervisor or officer shall attend and see the quantity taken out, and take an account of the fame. And if fuch diffiller shall not begin and proceed to take the spirits out of the warehouse at the time mentioned in the notice, or within two hours after, such notice shall be void; and he shall give a fresh notice four hours at least before he shall begin to take the said spirits out of the warehouse. And if he shall make default in any of the faid particulars, he shall forfeit-100 l. f. 11.

And

And when any raw spirits shall be so taken out in purfuance of fuch notice, the fame shall be immediately pumped up, or put in the presence of the officer into the still or stills, and be rectified forthwith, and the spirits shall be run off immediately from the still into a like cask as is before directed to be provided and entred for the containing of spirits immediately distilled from low wines; and when the whole quantity of spirits designed to be made into brandy shall be collected in such cask from each still, the same shall be immediately made up in the presence of the officer to the strength of one to fix under hydrometer proof, at which strength all spirits are to be exported; and a gage of fuch spirits so made up shall then be taken by the officer, who shall keep an account thereof; and fuch spirits shall immediately afterwards be put into casks, and in the presence of the officer either carried directly on shipboard for exportation (if intended to be immediately exported), or elfe into fuch warehouse to be locked up in manner aforefaid. f. 12.

And if it shall happen, that the spirits distilled for exportation in one day belonging to any distiller, cannot for want of time be conveyed from the spirit cask (into which they are directed to be run immediately from the still) and locked up in the warehouse; the officer shall gage the same, and secure the lid of the said spirit cask, and take samples thereof: which spirits shall be locked up in the warehouse the next morning (if not intended for immediate exportation). And if it shall appear, that any decrease has been made in the quantity or quality of the said spirits so gaged; or if any such spirits shall have been removed in the absence of the officer; the distiller shall be charged for the said spirits so decreased or removed, double the duties which they would have been charged with if made

for home confumption. f. 13.

61. Provided, that if any such distiller, after he shall have deposited any spirits made for exportation (whether raw or rectified) in such warehouse, shall be desirous of using any such spirits for home consumption, and shall signify such his desire to the commissioners; they, or two of them, may direct the quantity so desired, to be taken out and delivered to the distiller; he having first paid to the officer appointed to receive the duties on low wines and spirits, the sum of 40 l. 10 s. for each ton of such spirits of the strength they were taken into such warehouse, to wit, one to six under hydrometer proof. s. 14.

Taking out for home confumption.

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And for the purpoles of this act, each gallon of brandy; or spirits of the strength of one to fix under hydrometer proof, shall be reckoned at 7 lb. 3 oz. the gallon. f. 15.

62. When any quantity of raw spirits shall, in pursu- To be returned ance of any notice, be delivered out of the warehouse, in to the warehouse order to rectify the same, as many called a few rectifying. order to rectify the same; as many gallons of rectified spirits, and of the same strength when made up, shall be produced, as fuch quantity amounted to when taken out of the warehouse, allowing only for the feints. And the commissioners shall make just allowances for necessary wafte, and the difference that will arise between gaging and weighing spirits. Which feints shall also be run off from the still directly into one large feint cask, and shall be immediately gaged as foon as the still is off, and an account thereof taken by the officer, and kept in stock by him; who may take famples of fuch feints. Which feints shall be in like manner locked up in the warehouse, and shall be there put into one or more large casks to be provided by the distiller, and marked with the word Feints. And every fuch distiller shall, once a month at least, diffill all his feints, and make up the spirits to be produced therefrom of the strength of one to fix under hydrometer proof. And all fuch spirits shall then be locked up, or exported as other spirits for exportation are hereby directed to be. f. 16.

63. If any decrease shall be found in the wash brewed Penalty for spior made for the distilling of spirits for exportation (except rits missing. fuch decrease as shall be made appear to the commissioners to have really and truly rifen from accidents); the officer shall charge double duty for the fame, calculating fuch wash so found to be decreased, to produce the same quantity of low wines and spirits as wash is presumed to do when spirits are made for home consumption; And if any decrease shall appear in the stock of spirits made for exportation, except such as may be accounted for by certificate of the officer either as being exported for merchandize or for stores, or as heing taken out for home confumption on payment of duties by confent of the commillioners, or by any allowance the commissioners shall have made for waste or for any difference which may have arisen between gage and weight, or by being sent coastwife for exportation, or by being fent with the confent of the commissioners to any other distiller in order to be rectified for exportation; the officer shall charge for all the spirits so decreased, double the duty such spirits would have been charged with if made for home confumption,

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Delivered out for carrying coaft

64. When spirits made for exportation shall be deliverwife for exporta- ed out of the warehouse, to be fent coastwife (with a certificate from the proper officer) in order for exportation; the distiller shall, on taking out the same, give bond in double the value of the spirits, and double the duties which are payable for the like spirits distilled for home consumption, that the same shall (the danger of the seas and enemies excepted) be really and truly landed in fuch port of this kingdom for which the same shall be entred. And fuch bonds shall not be discharged or delivered up, till a certificate shall be produced from the chief officer of excise of the port for which such spirits were entered, testifying the landing thereof, and describing the number of the casks or other package, and the marks, and the quantity of spirits landed; and also testifying, that the mafter, mate, pursuer, or other person having charge of the vellel, had made oath before him, that the faid spirits were fairly landed there, and that at the time of landing they were of the same quality as when shipped on board, and that no part of fuch spirits had been wilfully or fraudulently diminished, relanded, or unshipped, since the fame were put on board; and also, testifying, that the fame were really, and truly, fince their arrival there, exported from thence to foreign parts: and the condition of all fuch coast bonds shall be, to produce such certificate in fix months from the date thereof. And fuch spirits fo to be fent coastwife, when landed at the port for which they were entered, shall be immediately put into a proper warehouse, and there continued until the same shall be exported, and shall be secured by the person to whom they are fent, and by the faid chief officer, by two locks and keys to be provided by the person to whom the spirits were sent, one key to be kept by the said person, and the other by the officer. And all mafters, commanders, and other persons belonging to any vessel carrying goods coastwife, who shall affist or connive at the fraudulent landing, embezilling, or diminishing any spirits fent coastwife, and all other persons concerned in unshipping the same, or to whose hands the same shall knowingly come, shall be subject to all penalties and forfeitures inflicted by any former act for inforcing the fair exportation of spirits to foreign parts? f. 18.

Pond to be given 65. When any spirits made for exportation shall be enen esportation. tred for Ireland, or his majesty's plantations in America, or any other parts beyond the feas in Europe, or any parts in Africa, or Afia; the exporter thereof, when the

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whole quantity of spirits intended at that time to be exported shall be shipped, shall immediately give bond in double value of the spirits entred for exportation, and double the duties fuch spirits ought to have paid if they had been made for home consumption, that the same shall (the danger of the seas and enemies excepted) be landed at the place of destination, and until such bond shall be entred into by the exporter, the distiller from whose warehouse such spirits were sent shall be charged for such quantity of spirits so shipped for exportation, with double the duty fuch spirits would have been charged with if made for home confumption, and fuch charge shall not be discharged till such bond shall be given; and such bond shall not be discharged, till a certificate be produced from the proper officer abroad, of the due landing thereof, and of oath being made before him by the mafter or other person having charge of the vessel that the same had not been fraudulently diminished, relanded, or unshipped; and until oath shall also be made by the exporter at home, that to the best of his knowledge or belief, the same were disposed of at the place referred to in the certificate: and the condition of the bond shall be, to produce such certificate from Ireland in 6 months, from America in 18 months, from other parts of Europe in 15 months, from Africa in 18 months, and from Asia in 3 years, (danger of the seas and enemies excepted). f. 20, 21.

66. For the encouragement of the exportation of spirits Bounty on exmade from corn; there shall be a bounty of 31. 12s. for partation. every ton of spirits made from corn, which shall be exported as merchandize. And on oath made before two commissioners of excise, or justices of the peace for the place from whence fuch spirits are intended to be exported, that the fame were drawn and made in Great Britain from corn under the regulations of this act, and not mixed with any other materials except what were necessary for rectifying the same, and that since the making thereof the same have been properly secured in a warehouse according to the directions of this act, and that the same are to be exported for merchandize to be spent beyond the seas; and on producing a certificate under the hand of the officer of excife for the port or place where such spirits were shipped, of the quantities fo shipped, and that the same were shipped in the presence of such officer; the distiller shall be paid by the commissioners of excise, or their collector for the port of place where such spirits shall be shipped, the K 2

faid bounty of 31. 12 s. a ton, and fo in proportion for

Exportation of

a greater or less quantity. f. 19.

67. On the exportation of rum or spirits of the produce of the British plantations in America, as merchandize, in lieu of all former drawbacks, all the duties of custom shall be drawn back: and rum exported from the rum warehouse, before payment of the excise duties, shall be discharged of the said duties of excise. 33 G. 2. c. 28. f. 1, 2.

An on oath made before two commissioners or justices, that the rum is to be exported for merchandize to be spent beyond the seas; and on producing a certificate from the excise officer of the quantity shipped, and that the same was proof spirits, and that a certificate was produced from the proper officer of delivery from the warehouse on bond being given for the due exportation thereof, and also upon delivery of such last mentioned certificate, the person having custody of the bond for payment of the duties shall deliver it up; or if only a part of the rum contained in the bond shall be certified to be shipped off, then such quantity shall be indersed upon the bond. s. 5.

quantity shall be indorfed upon the bond. f. 5.

Provided, that the said drawback shall not be allowed for any rum exported in any cask containing less than 100 gallons, or shipped on board any vessel of less burden than 100 tons; or exported from any port not being the

port of its importation, f. 6.

And if after delivery from the faid warehouse any rum shall be concealed; or not shipped within 12 hours; or the casks or package be opened, or any part taken out, or the quality be altered; all such rum shall be forseited with the casks and package, and may be seized by any officer of excise; and the bond for exportation shall be put in suit, unless the commissioners see cause to sorbear the same. s. 8.

Power of the justices.

68. All the penalties not herein otherwise directed, shall be sued for and mitigated as by the laws of the excise, or in the courts at Westminster; and be half to the king, and half to the informer or prosecutor. 24 G. 2. c. 40. f. 33.

69. And where the retailer is sent to the house of correction, the commissioners shall cause rewards, not exceeding 51. to be paid to the informers. 17 G. 2.c. 17.f. 21.

70. No information shall be brought against a distiller, for any false or misentry, or offence, but within three months after the offence committed; and notice thereof shall be given to the party in writing, or left at his dwelling house, within a week after laying the information.

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Reward where no penalty is levied.

Limitation of actions.

71. And the commissioners shall cause all foreign ex-Sale after conciseable liquors, seized for non-payment of duty, or for demnation. being prohibited to be imported, to be publickly sold, after condemnation, to the best bidder, at such places as they shall think proper. 12 G. c. 28. s. 1.

72. And all stills, worms, and still heads, and other Utenfils liable. vessels and utenfils for distilling, by whomsoever they shall

be claimed, shall be liable to arrears. 7 & 8 W. c. 30. f. 13.

73. The justices within the limits of the head office of Conviction to be excise in London, shall once in every month transsmit to kept amount the clerk of the peace, a certificate of all persons convictfessions.

ed before them for any offences against this or any former act relating to spirituous liquors, or for licensing the retailers thereof; who shall keep and enter the same among

the records of the court: which certificate shall be evi-

dence upon any information relating to spirituous liquors. 24 G. 2. 6. 40. s. 21.

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XV. Starch and bair powder.

1. By the 10 An. c. 26. and 12 An. ft. 2. c, 9. For all Duty on flarch flarch imported shall be paid 4d. a pound, over and above imported. all other duties.

And all hair powder made of starch, or other powder that will serve for the same uses as starch, shall on importation pay the same duties, as foreign starch imported. 3 G. c. 4. s. 14.

2. And by the faid acts, for all starch made in the Duty on home kingdom, a duty shall be paid of 3d. a pound.

3. For the management of which duties on home officers for these starch the commissioners of the treasury shall appoint com-duties. missioners, who shall substitute inferior officers. 10 An.

4. And no maker of starch shall set up or use any work-places of making house, storehouse, room, or other place, for making dry-to be entred, ing, or keeping of starch, or for the converting or keeping any flour, meal, or other materials proper to be made into starch, or use any fat, trough, box, stove, utensil or other vessel for making of starch; without notice thereof being first given in writing at the next office for the said duties; on pain of 50l. 10 An. c. 26. s. 10.

And a fummons left at the place where discovery shall be made of such offence, directed to the person prosecuted, by his right or assumed name, shall be as effectual as is delivered personally, and directed to him by his proper name. 5 G. 3. c. 43. s. 19.

And

And all flour, meal, and other materials, found in any private workhouse, or other place, and all private utenfils, and vessels for making or keeping starch, for which no entry shall be made, or notice given, shall be forseited, or the value thereof. 10 An. c. 26. s. 22.

Officers to enter

5. And the officer shall at all times by day or night, and if in the night in presence of a constable, be permitted on request to enter the house, workhouse, warehouse, or other place used by any maker of starch; and by gaging or weighing the starch, and gaging the boxes and other utensils, or otherwise, to take an account of the quantity; and thereof shall make return in writing to the commissioners, leaving a true copy, if demanded, under his hand, with the maker; and if he shall not leave such copy (after demand in writing, 12 G. c. 28. f. 30.) he shall forseit 40s. 10 An. c. 26. f. 14.

Obstructing the

6. And if the maker shall obstruct such officer in the execution of his duty, he shall forseit 201, 10 An. c. 26.

How to be boxed in making.

7. The maker shall use regular, square, or oblong boxes only, for boxing and draining his green starch, before it is dried in the stove; on pain of 10 l. 4 G. 2. c. 14.

Notice of boxing.

8. And he shall, if within the bills, give 12 hours, elsewhere 24 hours notice in writing to the officer, of his intention to put any green starch into such boxes; on pain of 201. And he shall, within two hours after such notice shall have been given, begin to box it, and so continue, that the officer may have a gage of the whole; on pain of 201. 4 G. 2. c. 14. s. 1.

Gaging in the

9. And if the charge be made by gaging it before it be dried in the stove; then every box of green starch, or starch before it be dried, containing 57 inches in length, and 10 inches in breadth, and eight inches in depth, or in the whole 4560 solid inches, shall be esteemed 131 pounds averdupois, of starch dried and perfectly made. 1 G. β . 1. c. 2. f. 6.

Scales and weights.

10. And the maker shall keep scales and weights at the place where he makes his starch, and permit and affist the officer to make use thereof; on pain of 101, 10 An, c. 26. st. 16.

Removing before furveyed.

11. No maker of starch shall (on pain of 201.) remove any starch of which no account hath been taken by the officer, from the place where it was made; without giving to the officer within the bills 24 hours notice, and elsewhere two days notice. 10 An. c. 26. s. 19.

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And by 4 G. 2. c. 14. If he shall remove any starch after it is dried, out of the stove or drying place, before it has been weighed and taken account of by the officer; he

shall forfeit 50 l. f. 2.

12. If any officer of the duties upon flarch or of the Concealing, customs, shall have any cause to suspect that starch is privately making in any place, or concealed; then upon oath made before any commissioner or justice residing near, setting forth the ground of his suspicion, such commissioner or justice may issue his warrant, to authorize such officer by day or night (but if in the night, in presence of a constable) to enter such suspected place, and seize and carry away the same, with the materials, as forseited, together with the boxes and other things containing it: and unless the party make it appear that the duty has been paid, he shall forfeit 501. and if any person obstruct the officer, he shall forfeit 1001. 4 G. 2. c. 14. f. 4. 23 G. 2. c. 21. 1.34.

13. The officer shall be permitted to take an account of Officer to charge the quantities of flour, meal, and other materials proper for materials to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an occount of the last time he was there, and shall not on reasonable demand, receive satisfaction what is become thereof, he may charge the maker with fuch quantity of starch, as such materials so missing in his judgment would reasonably have made, not exceeding 25 pounds weight of starch, for every bushel of such ingredients

mixed or unmixed. 10 An. c. 26, f. 17.

14. The maker shall keep all starch by him made and starch unsurnot surveyed, separate from other starch which hath been veyed to be kept surveyed, for 24 hours after making within the bills, and separate. for two days elsewhere, unless it shall be sooner surveyed; on pain of 51. 10 An. c. 26. f. 20.

15. The maker within the bills shall monthly, and else- Entry of starch where every fix weeks, make entry in writing at the next made. office, of all the starch by him made, setting forth the weight, and how much was made at each time; on pain Which entry shall be on oath of the maker, or his chief workman, according to the best of his knowledge and belief, before such officer as shall be appointed by the commissioners within the bills, and elsewhere before the collector and supervisor. 10 An. c. 26. s. 11.

But he shall not be obliged to go further to make entry, than to the next market town. J. 12,

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Payment of the duties.

16. The maker within the bills, shall within four weeks, and elsewhere within fix weeks after entry, clear off the duties; on pain of double duty: And no maker, after default in payment, shall sell or deliver out any starch until he hath cleared off the duty; on pain of double value. 10 An. c. 26. s. 13.

Carrying it coast-

17. Cocquets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where configned; and if shipped without such cocquet, it shall be forfeited and seized, together with the package. 23 G. 2. c. 21. s. 29.

Importation and exportation.

18. No starch shall be imported otherwise than in some package, containing at least 224 pounds of neat starch, and stowed openly in the hold; on pain of being seized and forseited, together with the package, and the master of the vessel to forseit 501. 23 G. 2. c. 21. s. 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the starch was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forseiture. 26 G. 2. c. 32. f. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all starch forseited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be sound unshipping or unshipped. 23 G. 2. c. 21. s. 28.

Starch that hath paid the duties may be exported; and the duties shall be drawn back. 10 An. c. 26. f. 25, 26, 27.

But no drawback shall be allowed on the exportation of any foreign starch imported. 23 G. 2. c. 21. f. 36.

And the officers of excise or customs may seize any starch or hair powder, with the horses and package, where they have good reason to suspect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and shall in ten days exhibit an information before three commissioners of excise, or two justices near where the seizure is made; and if the party doth not make it appear that the duty hath been paid, it shall be forseited, together with the horses and package; and the offender shall likewise forseit 51. for every hundred weight. 4 G. 2. c. 14. f. 3.

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And by the 23 G. 2. c. 21. it is enacted, that the faid officers may feize any ftarch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported, or relanded after drawback; and if the party, at the hearing of the information, shall not make it appear that the duty hath been paid or secured, he shall forseit 51. for every 100 pounds weight, and also the goods and package shall be forseited. S. 30.

And if any foreign flarch shall be unshipped, with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation or debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forseited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized, shall forseit 51. for every hundred weight. 23 G. 2. c. 21. f. 31.

And if any person shall knowingly harbour or conceal any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 l. for every hundred weight, together with the goods and package. 23 G. 2. c. 21. f. 32.

And where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in London, the officer who made the seizure may cause notice signed by the folicitor of excise, to be affixed at the Royal Exchange, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation, at the next market town, on the market day, next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof: And the judgment thereon shall not be liable to appeal, nor be removed by certiorari. 23 G. 2. c. 21.

19. No perfumer, peruke maker, barber, or dealer in Making of hair hair powder, shall make, use, or offer to sale, any powder powder made of or mixed with alabaster, talke, plaister of paris, whiting, lime, or other thing of the like nature (sweet scents only excepted); on pain of forfeiting the same, and 50 l. 12 An. st. 2. c. 9. s. 20.

And

And by the 4 G. 2. r. 14. If any maker of hair powder, or other fuch person, shall mix any powder of alabafter, plaister of paris, talke, chalk, whiting, lime, or any other material (rice first made into starch, and sweet scents only excepted) with any starch or powder of starch to be made use of for making of hair powder, and shall make any hair powder with any the faid materials, or any other material except flarch or powder of flarch, or of rice first made into starch, and shall use, sell, or offer to fell any hair powder so mixed or made; he shall forfeit the fame, and 20 l. f. 5.

Places of making bair powder to be entred.

20. Every maker of hair powder shall make entry in writing at the next excise office, of his place of abode, and of his workhouse or other place made use of for making hair powder; on pain of 20 l. 4 G. 2. c. 14.

Officer to enter the fame and fur vey.

21. And the officer, in the day time, on his request, may enter places used for making hair powder, and the shops of perfumers, peruke makers, barbers, and other fellers or dealers in hair powder, and examine the fame, and carry away samples, paying a reasonable price for the fame. 4 G. 2. c. 14. f. 7.

And if such starch maker or dealer shall not on request fuffer him to enter, and examine, and take famples (on offering to pay the common price); he shall forfeit 20 l,

Person having in his possession materials for powder.

22. And if any starch maker, or dealer in hair powder, shall have in his possession, for making, mixing, or counadulterating hair terfeiting hair powder, any alabaster, plaister of paris, talke, chalk, whiting, lime, or other material, besides flarch, or powder of starch, or of rice first made into ftarch; he shall forfeit the same, and 101. 4 G. 2. c. 14. f. 8.

Power of the juftices.

23. All the faid forfeitures shall be sued for, levied and mitigated, as by the laws of excise, or in the courts at Westminster; and be distributed half to the king, and half (and on the 10 An. c. 26, half with full costs) to the prosecutor, 10 An. c. 26. f. 29. 24 G. 2. c. 40. f. 33.

Proof to lie on the claimer.

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24. And where any starch shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not; the proof shall lie on the claimer, and not on the officer. 23 G. 2. 4. 21. J. 34.

Appeal.

25. And if the party is not fatisfied with any judgment of the justices, on the act of 23 G. 2. c. 21. abovementioned, he may appeal to the next quarter fessions (ex-

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cept in the case before mentioned, where no person shall claim the goods seized.) f. 36.

26. And the mitigation on the faid act of 23 G. 2. shall Mitigation. not reduce the penalty to less than a fourth part, over and

above the charges. J. 37.

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27. And all starch, materials, and utensils, in custody Utensils liable, of the maker, or of any person to his use, shall be liable to all arrears of the duty, and penalties; and such proceedings may be had thereupon, as if the debtor or offender were the lawful owner. 10 An. c. 26. s. 23.

XVI. Wire.

1. No foreign imbroidery, or gold or filver brocade, Importing of thread, lace, fringe, or work made thereof, or of copper, wire. brass, or other inferior metal, or gold or filver wire, or plate shall be imported. 15 G. 2. c. 20. f. 7. 22 G. 2. c. 36. f. 1.

2. For all gilt wire made in Great Britain shall be paid Duty on home a duty of 8 d. an ounce; for silver wire 6 d. an ounce, wire.

troy weight. 10 An. c. 26. f. 46.

3. And the commissioners of the treasury shall appoint Officers for these commissioners for these duties, who shall substitute infe-duties.

rior officers. 10 An. c. 26. f. 48.

4. And every person who shall draw any gold or silver Places of making wire into such wire as is commonly called big wire, shall to be entred. first give notice in writing at the next office for the said duties, of his name and place of abode, and where he intends to work; on pain of 201. And no refiner, wiredrawer, or other person, shall draw any gold or silver into such big wire, at any place other than some common bar house to be approved of by the commissioners; on pain of 201. 10 An. c. 26. s. 49.

And all gilt and filver wire, and bars for making it, which shall be found in any private workhouse, and all private utenfils for barring or drawing it, of which notice hath not been given, shall be forseited and seized, or the

value thereof recovered. 10 An. c. 26. f. 59.

5. And the officer shall at all times, by day or night, officer to enter and if in the night in presence of a constable be permitted and survey. on his request to enter the bar house, workhouse, or other place used for making of such wire, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall appoint, leaving a copy thereof, if demanded, with the maker; and if he shall refuse to leave such copy (after demand in writing,

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12 G. c. 28. f. 30.) he shall forfeit 40s. 10 An. c. 26.

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Obdirecting the officer.

6. And if any fuch maker shall obstruct the officer, in the execution of his office, he shall forfeit 201. 10 An. c. 26. f. 55.

Scales and weights.

Ingots to be

weighed.

7. And the maker shall keep weights and scales at the place of making the wire, and permit and affift the officer to weigh; on pain of to l. 10 An. c. 26. f. 54.

8. Every ingot or bar of filver, defigned for gilt wire. shall be weighed in the presence of the excise officer, who attends the forge where they are made, before they be covered with gold; and shall be weighed in presence of, and marked by the faid officer, after the gold is laid on: and

on refusal to admit the officer, the refiner or maker shall forfeit 201. half to the king, and half to him that shall fue. 15 G. 2. c. 20. f. 8, 9.

Allowance for

wafte.

. 9. If the officer's charge be made, by taking the weight of the gold and filver in big wire at the bar house, an allowance of one fifth part shall be made, in consideration of the waste, in reducing the same to small wire. 10 An.

Removing before forveyed.

Wire unfurveyed

10. No wire drawer shall (on pain of 40 l.) remove any gift or filver wire, of which no account hath been taken, from the bar house or place of making, without giving to the officer 24 hours notice. 10 An. c. 26. f. 56.

11. Wire not surveyed shall be kept separate from that to be kept fepawhich hath been furveyed, for 24 hours after making, unless it shall be sooner surveyed; on pain of 101. 10 An.

r. 26. f. 57.

Concealing.

12. If the maker, or he for whom it is made, shall conceal any wire, or bars of filver prepared for making it;

he thall forfeit 201. 10 An. c. 26. f. 58.

Entry of wire made.

13. The maker shall once in every month make entry in writing at the next office, of all the wire by him made, fetting forth the weight, and kinds, and how much was made in each week; on pain of 1001. Which entry shall be made on the oath of the maker, or his chief workman, to the best of his knowledge and belief, to be administred by the officer. 10 An. c. 26. f. 50.

Payment of the duty.

14. And the duty shall be cleared off in fix weeks after entry, on pain of double duty. 10 An. c. 26. f. 51.

Exportation.

15. If any person shall export any gold or filver thread, or lace or fringe made of plate wire, fpun upon filk, he shall have a drawback after the rate of 5s. a pound averdupois, of fuch filver thread, lace, or fringe, and of 6s. 8d. a pound of such gold thread, lace, or fringe. 10 An.

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16. All the powers of the excise laws shall be in force Power of the for managing these duties: and the penalties and forsei-justices. tures (not herein otherwise directed) shall be sued for, levied, and mitigated, as by the laws of excise, or in the courts at Westminster; and be imployed, half to the use of the king, and half to him that shall inform or sue. 10 An. c. 26. s. 64. 24 G. 2. c. 40. s. 33.

17. And all fuch wire, materials, and utenfils, in cuf- Utenfils liable, tody of any maker, or other to his use, shall be liable to the duties and penalties; and such proceedings may be had thereupon, as if such debtor or offender were the lawful

owner. 10 An. c. 26. f. 60.

For regulations concerning the true making of gilt and filver wire (which do not belong to this place) fee the act of 15 G. 2. c. 20.

And for prohibiting the felling or working up of foreign gold or filver lace or thread, fee the 22 G. 2. c. 36.

Information against an alchousekeeper for arrears.

Westmorland. D E it remembred, that this --- day of ______in the ___year of the reign of his majesty king George the third that now is, atin the faid county, A. I. gentleman, in his proper person, as well for his faid majesty, as for himself, exhibiteth to us A. P. and J. P. esquires, two of his said majesty's justices of the peace for the faid county, residing near to the place where the forfeiture herein after mentioned was made, a complaint and information, and thereby informeth us, that at several. times between the day of and the day of both now last past, at ____aforefaid in the faid county, one A. O. at a common alchouse then and there belonging to and used by him, did brew the several and respective quantities of beer and ale herein after mentioned; that is to fay, 30 barrels of strong beer and of strong ale, each above 6s. the barrel; and fixty barrels of small beer, not exceeding 6s. the barrel; and that the faid A. O. at and during the respective time and times of brewing the faid beer and ale, and of every part thereof, was and yet is a common alchousekeepen; and that there did thereby accrue and become due to his faid majesty from the said A. O. for the said beer and ale so by him

brewed as aforefaid, certain rates, duties, and fums of money, amounting in the whole to the fum of ----- of lawful money of Great Britain; which said rates, duties, and sums of money so accrued, or any part thereof, the said A. O. bath not paid or cleared off, to or for the use of his said majesty, within a month next after he, according to the statute in that behalf made, did make, or ought to have made his entry or entries of the faid beer and ale so by him there brewed as aforefaid, or of any part thereof, or at any time since; but the same yet remain wholly due and unpaid, contrary to the form of the statute in such case made and provided; whereby the said A. O. bath forfeited double the value of the faid rates, duties, and fums of money remaining unpaid, as aforesaid; that is to -of like money; and thereupon the said A. I. who as well for his faid majesty, as for himself exhibiteth this information, prays the judgment of us the faid justices in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said A. O. may be summoned to answer the premisses before us the said justices.

Summons on the foregoing information.

To Mr. A. O. alehousekeeper.

Westmorland. IN E J. P. and K. P. efquires, two of his majesty's justices of the peace for the faid county of ___do hereby give you notice that A. I. gentleman, bath exhibited before us an information against you for the fum of-being double the value of certain duties of excife of beer and ale by you brewed, the fingle duties whereof (as he alledgeth) you ought long since to have paid, but have neglected so to do: You are therefore hereby required to appear before us at the house of—at the sign of the—in—in the faid county, on the -- day of -- now next ensuing, at the hour of --- in the forenoon of the faid day, then and there to answer to the said information. And if you shall negleet so to do, we shall proceed as if you were personally present. And we do further authorize and require Mr. A. E. officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the faid justices. Given under our hands and feals at -- in the faid county, theday of ____in the ___year of the reign of his said majesty king George the third.

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may faid Note; the officer who shall serve the summons, ought not to be the informer or prosecutor, for this obvious reason, because that he, being intitled to a share of the forfeiture, is not a proper witness to prove such service; for that would be admitting him to swear for himself in his own cause, which is abhorrent from the nature of our laws.

Information against a maltster for concealing a quantity of malt.

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Westmorland. Be it remembred, that this day of in the year of the reign of in the year of the reign of his majesty king George the third, at ____ in the faid county, A. I. gentleman, in his proper person, as well for his said majesty as for himself, exhibiteth to us J. P. and K. P. esquires, two of his said majesty's justices of the peace for the faid county, residing near to the place where the offence herein after mentioned was committed, as is alledged, a complaint or information, and thereby informeth us, that A. O. ofin the said county, during three months now last past and longer, having been and continued to be, and yet being a maltster and maker of malt, and not having compounded for the duties of the malt herein after mentioned, he the faid A. O. within three months now last past, at-in the said county, did fraudulently hide, conceal, and convey away malt by him made, that is to fay, 12 bushels of malt by him fo made as aforesaid, from the sight and view of one A. E. being at the faid time of the faid biding and concealing thereof, and long before, and ever fince, the gager appointed to take an account of the same, and then and there endeavouring to take such account; which hiding, concealing, and conveying away as aforesaid, are contrary to the form of the Statute in such case made and provided: Whereby he the said A. O. for every bushel of the said malt so hid and concealed, hath forfeited 10s. of lawful money of Great Britain, amounting in the whole to 61. of like money. And thereupon the said A. I. who as well for his said majesty as for himself exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he may have one moiety of the faid forfeiture, according to the form of the statute in such case made; and that the said A. O. may be summoned to answer the said premises, before us the faid justices.

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forve the functions, ourself Summons on the foregoing information.

Westmorland. To Mr. A. O. maltster.

WE J. P. and K. P. esquires, two of his majesty's ju-stices of the peace, for the county aforesaid, do hereby give you natice, that A. I. gentleman, bath exhibited before us an information against you for the penalty of 61. by you forfeited for hiding, concealing and conveying away 12 bushels of malt, from the sight and view of the gager appointed to take an account of the same, against the form of the flatute in fuch case made: You are therefore bereby required to appear before us, at the bouse of at the sign of in in the faid county, on the day of now next ensuing, at the hour of in the forenoon of the same day, then and there to answer to the said information. And if you neglect so to do, we shall proceed as if you were personally present. And we do further authorize and require Mr. A. E. officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the faid justices. Given under our bands and feals at in the faid county, this ____ day of ___ in the year of the reign of his faid majefly king George the third.

Summens to give evidence.

Westmorland. To A. W. of yeoman.

WHEREAS we whose hands and seals are bereunto set, being two of his majesty's justices of the peace in and for the said county, have received information, that A. O. of --- in the faid county, alchousekeeper, did on theday of _____now last past, brew and sell ale and beer, and bath not made entry thereof, according to the flatute in that behalf made; and that you the faid A. W. are a material witness to be examined concerning the same: These are therefore to require you to appear before us at the house ofat the fign of the ____ in the faid county, on the ___ day of --- now next enfuing, at the hour of --- in the forenoon of the same day, to testify your knowledge concerning the premisses. Herein fail you not. Given under our hands Summing.

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and feals at _____in the faid county, the ____day of ____ in the _____year of the reign of his faid majesty king George the third.

Judgment against the defendant.

T the time and place appointed by our summons on A the information within written; that is to say, this ___day of ____in the ____year of the reign of our sovereign lord king George the third, at -- in the county of within mentioned; the within named defendant A. O. appeareth, and pleadeth that he is not guilty of the offence within mentioned; but upon a due and full hearing of the proofs made in and concerning the premisses, we do convict him thereof: [Or-fufficient proof being made before us, that the within named defendant A. O. hath had due notice of the within written information, and that he was duly summoned to appear before us here this day; and he, in contempt of the said summons, neglecting now to appear and making default therein; and the fact and offence in the within written information being now fully proved before us, we do convict him thereof: It is therefore now here considered and adjudged by us the faid justices, that the faid defendant bath forfeited the within mentioned sum of 501. (which we mitigate and lessen to the sum of 71.) to be distributed as the law directs. Given under our hands and feals, at --- aforefaid, this --- day of --- in the year of the reign of our faid fovereign lord king George the third.

Warrant of diffress,

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To A, E, and B. E. officers of excise, and to either of them, and to such other person and persons as they or either of them shall take to his or their affishance.

WE whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of—do in his said majesty's name, authorize and command you and every of you, that upon the brewing vessels and utensils for brewing used by A.O. of—in the said county, innkeeper, in the brewhouse and place where he usually brews, at—aforesaid, and upon the goods and chattels of the said A.O. you or any of you do levy the sum of 201. of lawful money of Great Vol. II.

Britain, by us mitigated and lessened from the sum of 50 l. of like money recovered against bim by A. I. gentleman, who prosecuted as well for our sovereign lord the king, as for himself, for a certain offence committed by the said A. O. against the laws and statutes of excise, whereof he the said A. O. is convicted before us; And for the levying thereof you are to seize, take, and carry away the faid brewing veffels and utenfils for brewing, and also the goods and chattels aforesaid; and if in [eight] days next after such seizure, the said sum of 20 l. together with the reasonable charges of taking and keeping the said veffels and utenfils, goods and chattels, shall not be paid, then, and in such case (after the expiration of the said-days) you are to make sale thereof or so much thereof as shall be sufficient for the purposes herein specified; which said sum of 201. when so levied as aforesaid, you are forthwith to pay to the collector of excise for the collection called --- collection, for the time being; to be by him distributed and answered, according to the flatute in such case made and provided: and after levying thereof, the overplus which shall remain of the said brewing vessels and utensils for brewing, and of the said goods and chattels, and of the money arising by such sale, you are to return unto the said A. O. upon demand, the reasonable charges of taking, keeping, and felling the faid veffels and utenfils, goods and chattels, being out of the said overplus money first deducted.

And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case there cannot be found sufficient to raise the sum last mentioned, then and in such case, you are by a return to this our warrant, forthwith to certify the same, to us the said justices. Given under our hands and seals at—in the said county, this—day of—in the—year of his said majesty's reign, and in the year of our lord—

Return of the warrant of diffress.

Westmorland. I A. E. one of the officers of his majesty's duties of excise, do hereby certify to J. P. and K. P. esquires, two of his said majesty's justices of the peace for the said county, that by virtue of a warrant from the said justices to levy the sum of 20 l. upon the brewing vessels and utensils for brewing used by A. O. in his usual place of brewing, and upon his goods and chattels, I have made diligent search for such vessels, utensils, goods, and chattels; and that I can find none such; and that I do not know, nor can find, that the said A. O. hath any goods or chattels whatsoever. Witness my hand hereunto set, at—in the said county, this—duy of—in the year of our lord—

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To A. E. and B. E. officers of excise, and to either of them, and to such perfon or persons as they or either of them shall take to their affistance: And to the gaoler or keeper of such prison to whom these presents shall come.

WHEREAS we whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of ---- by our warrant under our hands and feals, bearing date the ____ day of ____ now instant, did require and command you the said A. E. and B. E. or either of you, to levy the sum of 20 l. therein mentioned on the brewing vessels and utensils for brewing, used by A. O. of _____in the faid county, innkeeper, and upon the goods and chattels of the faid A.O. And whereas you the faid A. E. and B. E. by a return and certificate under your hands, bearing date theday of -now instant, have certified to us, that having made diligent search for such brewing vessels and utensils for brewing, and for fuch goods and chattels, you cannot find any whereon to levy the said 20 l. or any part thereof, and that no such vessels, utenfils, goods, or chattels can be found: We therefore the said justices do in his majesty's name hereby authorize, require and command you, every, or any of you, to take and arrest the body of him the said A. O. and forthwith to carry him to the gaol or prison of and for the county or place where you shall so take and arrest him; and him, together with a duplicate of this our warrant, there to deliver into the custody of the gaoler or keeper of the said gaol or prison of and for the said county or place, there to remain in safe custody until he shall satisfy and pay the Said sum of 201. of lawful money of Great Britain, by us mitigated and lessened from the sum of 50 l. of like money, by us the faid justices adjudged against him, upon an information exhibited against him before us by A. I. gentleman, as well on the behalf of his said majesty, as of himself, for a certain offence committed by the said A. O. against the laws and statutes of excise, whereof he stands convicted before us the faid justices. And all constables, and other his majesty's officers, are hereby authorized and required, to be aiding and affifting to you in the due execution hereof. And the gaoler and gaolers, keeper and keepers of such prison or gool to which you shall so carry the body of the faid A.O. is and are hereby authorized and required, to receive into his or their custody the body of the said A. O. and the same L 2

to keep in safe custody until he shall satisfy and pay the said sum of 201. before mentioned. And for your, any, or either of your doing as is before respectively directed, this shall be to you, any, or either of you respectively, a sufficient warrant and authority. Given under our hands and seals at—in the said county, this—day of—in the—year of the reign of his said majesty, and in the year of our lord—

More precedents it is not necessary to add, fince the officers of excise are generally well furnished with printed forms drawn by good advice.

Note; These statutes abovementioned, relating to this title, are but temporary, and have their continuance as follows,

8 G. c. 18. Spirituous liquors, By the 33 G. 2. c. 16. to Sep. 29. 1767, and from thence to the end of the then next fession of parliament,

5 G. 2. c. 24. Coffee. By the 32 G. 2. c. 23. to June 24. 1766, and from thence to the end of the then next fession of parliament.

15 G. 2. c. 25. Rum. By the 4 G. 3. c. 12. to Sep.

29. 1771, &c. 19 G. 2. 4. 34. Outlawed smugglers. By the 4 G. 3. 4. 12. to Sep. 29. 1771, &c.

Execution.

HERE a person attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution should not be awarded against him; if he deny that he is the same person, it shall be immediately tried by a jury returned for that purpose. 2 Haw. 463.

2. The court may command execution to be done,

without any writ. 2 Haw. 463.

3. In fixed and stated judgments, the law makes no distinction between a peer and a commoner, or between a common and ordinary case, and one attended with extraordinary circumstances; for which reason it was adjudged in Felton's case, who murdered the duke of Buckingham,

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that the court could not order his hand to be cut off, nor make it part of the fentence that his body should be hanged in chains, but that the body after execution being at the king's disposal, might be hanged in chains, or otherwise ordered as the king should think fit. 2 Haw.

4. But the king may pardon part of the judgment; as where the judgment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading; whereby the judgment is not altered, but part of it re-

mitted. 2 H. H. 412.

5. It is clear, that if a man condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 Haw. 463.

Exigent. See Process.

Extortion.

It is faid, that extortion, in a large fense, signifies any oppression under colour of right; but that, in a strict sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. I Haw.

And by the statute of the 3 Ed. 1. c. 26. (which is only in affirmance of the common law) No sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth, shall yield twice as much, and shall be punished

at the king's pleasure.

No sheriff nor other the king's officer] Under these words, the law beginning with the sheriffs, are understood escheators, coroners, bailists, gaolers, and other inserior officers of the king, whose offices were instituted before the making of this act, which do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service. 2 Inst. 209,

Also the justices of the peace, whose office was instituted after this act, are bound by their oath of office, to take nothing for their office of justice of the peace to be

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Extortion.

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limited by statute.

And generally, no publick officer shall take any other fees or rewards, for doing any thing relating to his office, than some statute in force gives him, or else as hath been antiently and accustomably taken; and if he do otherwise, he is guilty of extortion. Dalt. c. 41.

Shall take any reward] Therefore by this flatute, they can at this day take no more for doing their office, than hath been fince allowed to them by authority of parliament. 2 Inst. 210.

And all prescriptions which have been contrary to this statute, and to the common law in affirmance of which it is made, have been always holden to be void. I Haw.

170.

And it has been resolved, that a promise to pay them money for the doing of a thing, which the law will not suffer them to take any thing for, is merely void. I Haw.

To do his office] It is not said, that he shall take no reward generally, but no reward to do his office: Thus the see of 20 d. called bar see, time out of mind taken by the sheriff of every prisoner that is acquitted, is not against this statute; for it is not taken for doing his office. 2

Inft. 210.

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But there seems to be no necessity for this distinction, for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest considence, from allowing reasonable fees for the labour and attendance of their officers: for the chief danger of oppression is from officers being left at their liberty to set their own rates on their Jabour, and make their own demands; but there cannot be so much sear of these abuses, while they are restrained to known and stated sees, settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. I Haw. 171.

But in the ecclesiastical court, a person was libelled against for sees, and upon motion a prohibition was granted, for that it was holden that no court hath a power to establish sees: the judge of a court may think them reasonable, but that is not binding; but if on a quantum meruit a jury think them reasonable, then they become

established fees. 1 Salk. 333.

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The fees in fessions, for traversing, trying, or discharging indictments, discharging recognizances, and the like, do vary according to the different customs in different places. Dalt. r. 41:

Shall yield twice as much] At the common law this offence is feverely punishable at the king's suit, by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law did give; for hereby the plaintiff shall recover his double damages. 2 Inft. 210. 1 Haw. 171.

And by the 31 El. c. 5. Actions for extortion may be

laid in any county.

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At the king's pleasure That is, by the king's justices, before whom the cause depends. 2 Inst. 210.

Indictment for extortion in a gaoler.

HE jurors for our lord the king, upon their oath pre-Jent, that A.O. late of ____in the faid county, yeoman, on the ____day of ___in the ___year of the reign of ___was taken upon suspicion of having com= faid county, by virtue of a warrant directed to the faidunder the hand and feal of Sir William Dalston, knight, then and yet one of the justices of our sovereign lord the king, assigned to keep the peace in the faid county, and was on the same day and year committed by him the faid Sir William Dalston, to A. G. keeper of the gaol of our faid sovereign lord the king at -- in the said county, under the custody of him the said A. G. to be safely kept, upon suspicion of the felony afore-said, and the said A. O. was detained in that prison under the custody of the said A. G. from the time that he was . committed to the said prison for one month from thence next enfuing, upon suspicion of the said felony; nevertheless the said A. G. in no wife regarding the statute in that case made, and the penalty therein contained, did on the day of at aforesaid, in the said county, demand and receive -pounds of lawful money of Great Britain of and from the said A. O. for ease and favour in the said gaol for the faid time, in contempt of our faid fovereign lord the king, and against the form of the statute aforesaid, and against the peace our said sovereign lord the king, his crown and dignity.

Indictment for extortion of a bailiff.

False tokens. See Cheat.

Fast days.

BY the 2 & 3 Ed. 6. c. 19. for the incouragement of the fisheries, and the increase of cattle; and the 5 El. c. 5. in itled, an act touching political conflictutions for the maintenance of the navy; and by the 35 El. c. 7. it is enacted as follows.

No person shall eat any manner of sless on any Friday or Saturday, or the embring days, or in Lint, nor on any other day commonly reputed a fish day; on pain of forfeiting 20 s. or being imprisoned one month.

And every person in whose house any slesh shall be eaten on fish days, and not disclosing the same to a publick officer having authority to punish the same; shall forfeit

Which said forfeitures shall be, one third to the king, one third to the informer, and one third to the common

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nse of the parish were the offence shall be committed; to be levied by the churchwardens after conviction.

Profecution to be at the affizes or fessions, in three

months after the offence committed.

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But nothing herein shall extend to any person having the king's licence; or being in great age, and weakness thereby, or fick, or notably hurt; or a woman with child, or lying in child-bed, for eating of such one kind of sless the shall have great lust unto; or in prison, nor to the king's lieutenant, deputy, or captain in his armies, but the same may eat, or license his soldiers to eat sless for lack of other victual; nor to persons licensed by the archbishop of Canterbary.

And fuch licences shall be on condition, that the perfon licensed shall within fix days after Candlemas, pay to the poor box where he dwells, if he be a Lord 26s. 8d.

a knight 13s. 4d. and all others 6s. 8d.

But fick persons may be licensed by the bishop of the diocese, or by the parson, vicar, or curate of the parish, or (if there be none, or he be wilful) of the next parish; and if the sickness continues above eight days; the licence shall be registred in the church book, with the knowledge of a churchwarden; and the curate shall have 4d. for entry; and the same to endure no longer than such sickness.

And no licence shall extend to the eating any beef at any time of the year, nor veal from Sep. 29. to May 1. in any year.

And persons licensed (except for sickness) shall for every

dish of flesh at their table, have one dish of sea fish.

Fees. See Extortion. Felo de se. See Domicioe.

Felony, Mispession of Felony, and Thestbote.

I. Felony.

FELONY is generally supposed to come from the Saxon fell, which signifieth sierce or cruel; of which the verb fell signifieth to throw down or demolish; and

the substantive of that name is used to fignify a mountain rough and uncultivated. But the same word, with a little variation, runneth through most of the European languages, and signifieth more generally an offence at large; and the Saxon word fællan signifieth to offend, and and fællnisse an offence or failure; and altho' felony, as it is now become a technical term, signifieth in a more restrained sense an offence of an high nature, yet it is not limited to capital offences only, but still retaineth somewhat of this larger acceptation; for petit larceny is selony, altho' it is not capital.

It would swell this title near to the bigness of half the book, to set down every thing which may be comprehended under this word felony: therefore it is necessary to refer the consideration of the several particular kinds of felonies to their respective titles; as for instance, Homicide, Robbery, Burglary, Rape, Coin, Forgery, and many others; and especially the law relating to stolen goods of all kinds belongs

to title Larceny.

The method of bringing a felon to justice from the first commission of the felony, to his condemnation and execution, is treated of under the several titles of Hue and cry, Arrest, Examination, Bail, Commitment, Gaol, Arraignment, Appeal, Indictment, Mute, Confession, Jurors, Evidence, Clergy, Judgment, Attainder, Forfeiture, Transportation, Execution. And the course and whole procedure of trying an offender, is treated of under title Sessions.

So that there is nothing left for this place, but to take notice of one circumstance which is common to all felonies in general, and that is, concerning the charges of

profecution.

By the 3 J. c. 10. The felon shall pay the charges of his carrying to gaol, if able; to be levied by distress by

warrant of one justice.

And by the statute of the 27 G. 2. c. 3. if he is not able, the same shall be paid, by order of such justice, by the treasurer out of the count rate; and in *Middlese* by the overseers of the poor where the party was apprehended.

And by the 25 G. 2. c. 36. the court, before whom any person hath been tried and convicted of any grand or petit larceny, or other selony, may at the prayer of the prosecutor, and on consideration of his circumstances, order the treasurer of the county in which the offence shall have been committed, to pay him such sum as they shall judge reasonable, not exceeding the expences he was put

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to in carrying on the profecution, with a reasonable allowance for his time and trouble; and the clerk of affize, or of the peace, shall forthwith make out such order, and deliver the same to the prosecutor, on paying 1 s. and the treasurer shall pay the same on sight, and be allowed the same in his accounts.

II. Misprision of felony.

Misprission of felony (from the French word mespris, a neglect or contempt, 3 Inst. 36.) is the concealing of a selony which a man knows, but never consented to: for if he consented, he is either a principal or accessary in the felony, and consequently guilty of misprission of selony and more. 1 H. H. 374.

For it is said, that every Felony includes misprission of felony, and may be proceeded against as a misprission only, if the king pleases. 1 Haw. 125.

The punishment of misprision of felony in a common person, is sine and imprisonment; in an officer, as sheriff or bailiss of liberties, imprisonment for a year, and ransom at the king's pleasure, by the statute of 3 Ed. 1.

If any person will save himself from the crime of misprison, he must discover the offence to a magistrate with

all speed that he can. 3 Infl. 140.

Misprision, in a larger sense, is used to signify every considerable misdemeanor, which hath not a certain name given to it in the law.

III. Theftbote.

Theftbote (from the Saxon words theft, and bote, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends not to profecute. I How. 125.

But the bare taking of one's own goods again, which have been stolen, is no offence, unless some favour be

thewn to the thief. 1 Haw. 125.

This offence is very nearly allied to felony, and is faid to have been anciently punished as such; but at this day it is punishable only with ransom and imprisonment, unless it were accompanied with some degree of maintenance given to the felon, which makes the party an accellary after the fact. 1 Haw. 125.

Warrant for felony.

Westmorland. To the constable of-

CORASMUCH as A. I. of _____in the county of -yeoman, bath this day made information and complaint upon oath, before me-one of his majesty's justices of the peace for the said county, that this present day divers goods of him the faid A. I. to wit, bave felo-niously been stolen, taken, and carried away from the bouse of him the faid A. I. at-aforefaid, in the county oforesaid, and that he hath just cause to suspect, and doth suspect that A. O. late of --- yearnan, feloniously did feal, take and carry away the same [Or otherwise as the case shall be:] These are therefore to command you forthwith to apprehend him the said A O. and to bring him before me to answer unto the Said information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and feal the day of in the

The forms of indictments for stolen goods of various kinds, are inferted under the title Larcenp.

> Feme covert. See Mife. Fences. See Cloob.

Fern. Burning of it in forests. See Burning. Fire. See Buthing.

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Fire

Fire in London.

THE acts relating thereto are, 6 An. c. 31.
7 An. c. 17.
11 G. c. 28.
4 G. 3. 6, 14,

Fireworks.

1. I T shall not be lawful for any person to make or cause Fireworks a nate to be made, or to sell or expose to sale, any squibs sance.

rockets, serpents, or other sneworks, or any cases, moulds or other implements for making the same; or to permit the same to be cast or fired from his house or other place thereto belonging, into any publick street or road; or to throw or fire, or be aiding in throwing or firing the same, in any publick street, house, shop, river, or highway; and every such offence shall be adjudged a common nusance. 9 & 10 W. c. 7. s.

2. And if any person shall make or cause to be made, Making or selver give, sell, or offer to sale, any squibs, rockets ferling rockets. pents, or other sireworks, or any cases, moulds, or other implements for making the same; he shall on conviction before one justice, or chief magniferate, by consession, or oath of two witnesses, forfeit 51. half to the poor, and half to the prosecutor; to be devied by distress, by warrant of such justice or chief magniferate. 9 & 10 W.

3. And if any person shall permit any the same to be Suffering rockets cast or fired, from his house or other place thereto belonging, into any publick street or road, or any other house or place; he shall forseit 20 s. in like manner, 9 & 10 W.

4. And if any person shall cast or fire, or be aiding in Firing rockets. casting or firing any the same, into any publick street, house, shop, river or highway; he shall forfeit 20s. in like manner: and if he shall not immediately on conviction pay to the justice the said forfeiture for the uses aforesaid, he shall commit him to the house of correction to be kept to hard labour for any time not exceeding one month.

Exception,

month, unless he shall sooner pay the forseiture. 9 & 10

5. But nothing herein shall extend to the officers of the ordnance, or artillery company. 9 & 10 W. c. 7. J. 4, 5.

Fish and fishing. See Game. Fish falted. See Excise. Flight. See Forfeiture.

Forcible entry and detainer.

FORCE, in the common law, is most commonly taken in ill part, for unlawful violence.

It feems that at the common law, a man diffeised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time: And it feems certain, that even at this day, he who is wrongfully dispossession, the wrong doer, if he retaking of them by force from the wrong doer, if he refuse to redeliver them; for the violence which happens thro' the resistance of the wrongful possession, being orignally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought. I Haw, 140.

But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been sound by experience to be very prejudicial to the publick peace, by giving an opportunity to powerful men under the pretence of seigned titles, forcibly to eject their weaker neighbours, and also by sorce to retain their wrongful possessions, it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice. 1 Haw. 141.

However even at this day, in an action of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any inquiry concerning the force; for howsoever he may

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Not feems c barely g ber of be punishable at the king's fuit, for doing what is prohibited by statute, as a contemner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintist, whose injustice gave him the provocation

in that manner to right himself. I Haw. 141.

Since therefore offences of this nature are made such, not by the common law, but by statute (after having premised, that they who keep possession with force, in lands and tenements, whereof they or their ancestors, or they whose estate they have in the same, have continued their possession in the same, by three whole years next before without interruption, shall not be endamaged by force of any of the statutes concerning forcible entry, 8 H. 6. c. 9. s. 7. I Haw. 152.) I shall consider those several statutes, with the interpretation that hath been put upon them, under the following heads:

I. What is a forcible entry.

II. What is a forcible detainer.

III. How the same are punishable by action at law.

IV. How punishable at the general sessions.

V. How punishable by one justice.

VI. How punishable on a certiorari.

VII. How punishable as a riot.

I. What is a forcible entry. .

By the 5 R. 2. c. 8. None shall make any entry into any lands or tenements (or benefice of holy church, 15 R. 2. c. 2. or other possessions, 8 H. 6. c. 9. s. 2.) but where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner; on pain of imprisonment and ransom at the king's will.

Or other possessions] It seems clear, that no one can come within the danger of these statutes, by a violence offered to another in respect of a way, or such like easement, which is no possession. And there seems to be no good authority, that an indictment will lie in this case for a common, or office. I Haw. 146.

Not with strong hand, nor with multitude of people] It feems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the

church or market, or for fuch like purpose, without doing any act, which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry

shereinto. 1 Haw, 144.

But it feemeth, that if a person enter into another man's house or ground, either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear, tho' it be but to cut, or take away another man's corn, grass, or other goods, or to tell or crop wood, or do any other like trespass, and tho' he do not put the party out of his possession, yet it seemeth to be a forcible entry. Dalt. c. 126.

But if the entry were peaceable, and after such entry made, they cut or take away any other man's corn, grass, wood, or other goods, without apparent violence or force; tho' such acts are counted a disseisn with force, yet they are not punishable as forcible entries. Dat. c. 126.

But if he enter peaceably, and there shall by force or violence cut or take away any corn, grass, or wood, or shall forcibly or wrongfully carry away any other goods there being; this seemeth to be a forcible entry punishable by these statutes. Dalt. c. 126.

So also shall those be guilty of a forcible entry, who having an estate in land, by a defeasible title, continue with force in the possession thereof, after a claim made by one who had a right of entry thereto. 1 Haw. 145.

But he who barely agrees to a forcible entry made to his use, without his knowledge or privity, shall not be adjudged to make an entry within these statutes, because he no way concurred in, or promoted the force.

And, in general, it feemeth clear, that to denominate the entry forcible, it ought to be accompanied with fome circumstances of actual violence, or terror; and therefore that an entry which hath no other force than such as is implied by the law, in every trespass whatsover, is not

within these flatutes. I Haw. 145.

As to the matter of violence; it feems to be agreed, that an entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he resuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in it or not, especially if it be a dwelling house, and perhaps also by any act of outrage after the entry, as by carrying away the party's goods; but it seems that an en-

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try is not forcible, by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by frong band, or multitude of people; and it hath been holden, that an entry into a house thro' a window, or by opening a door with a key, is not

forcible. 1 Haw. 145.

In respect of the circumstances of terror; it is to be obferved, that wherever a man, either by his behaviour or speech, at the time of his entry, gives those who are in posfession just cause to fear, that he will do them some bodily hurt, if they will not give way to him, his entry is efteemed forcible, whether he cause such a terror, by carrying with him fuch an unufual number of attendants, or by arming himself in such a manner, as plainly intimates a defign, or by actually threatning to kill, maim, or beat those who shall continue in possession, or by giving out fuch fpeeches as plainly imply a purpose of using force, as if one fay that he will keep his possession in spite of all men, or the like. 1 Haw. 145.

But it feems that no entry shall be judged forcible, from any threatning to spoil another's goods, or to destroy his cattle, or to do him any other such like damage, which

is not personal. 1 Haw. 146.

However it is clear, that it may be committed by a

fingle person, as well as by twenty. 1 Haw. 146.

But nevertheless all those who accompany a man, when he makes a forcible entry, shall be judged to enter with him, whether they actually come upon the lands or not. 1 Haw. 144.

II. What is a forcible detainer.

It feemeth certain, that the fame circumstances of violence or terror which will make an entry forcible, will make a detainer forcible also. And a detainer may be forcible, whether the entry were forcible or not. Haw. 146.

III. How they are punishable by action at law.

If any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably, and after holden out with strong hand; the party grieved shall have affize of novel disseifin, or a writ of trespass against the disseifor; and if he recovers, he shall have treble damages, and the defendant moreover shall make fine and ransom to the king. 8 H. 6. c. g. f. 6.

Forcible entry and detainer.

The party grieved shall have assize &c.] But this actions being at the suit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entereth with force, where his entry is lawful, he shall not be punished by way of action; but yet he may be indicted upon the statute, for the indictment is for the force, and for the king, and he shall make fine to the king, although his right is never so good. Dalt. c. 120.

Treble damages] And this he shall recover, as well for the mean occupation, as for the first entry: And albeit he shall recover treble damages, yet he shall recover costs, which shall be trebled also; for the word damages includeth costs

of fuit. 1 Inft. 257.

IV. How punishable at the general sessions.

The party grieved, if he will lose the benefit of his treble damages and costs, may be aided and have the affistance of the justices at the general sessions, by way of indictment (A) on the statute of 8 H. 6. Which being found there, he shall be restored to his possession, by a writ of restitution granted out of the same court to the sheriff. Dalt.

In the caption of which indictment, it will be sufficient to say, justices assigned to keep the peace of our lord the king, without shewing that they have authority to hear and determine selonies and trespasses; for the statute enables all justices of the peace, as such, to take such indictments.

1 Haw. 147.

And the tenement in which the force was made, must be described with convenient certainty; and must set forth that the desendant actually entered; and ousled the party grieved; and continueth his possession at the time of finding the indictment; otherwise he cannot have restitution, because it doth not appear that he needeth it. i Haw. 147, 149, 150.

But if a man's wife, children, or servants do continue in the house or upon the land, he is not ousted of his possession; but his cattle being upon the ground, do not

preserve his possession. Dalt. c. 132.

An indictment for forcible entry was quashed, for not setting forth, that the party was seised or disseised, or what estate he had in the tenement; for if he had only a term for years, then the entry must be laid, into the freehold of A. in the possession of B. 3 Salk. 169.

V. How

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V. How punishable by one justice.

1. For a more speedy remedy, the party grieved may complain to any one justice; or to a mayor, sheriff, or

bailiff, within their liberties. 8 H. 6. c. 9.

2. But altho' one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will fuffer it, to take to his affiftance one or two more justices.

3. Concerning which power of one justice, it is enacted

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After complaint made to fuch justice, by the party grieved, of a forcible entry made into lands, tenements, or other pofsions, or forcible holding thereof, he shall within a convenient time, at the costs of the party grieved (without any examining or standing upon the right or title of either party) take sufficient power of the county, and go to the place where such force is made, 15 R. 2. c, 2. 8 H. 6. c. 9. f. 2.

Complaint by the party grieved Yet these words do not inforce any necessity of such a complaint; for it is holden, that the justice may and ought to proceed, upon any information or knowledge thereof whatfover, tho' no complaint at all be brought unto him, by any party

grieved thereby. Lamb. 147.

Power of the county] All people of the county, as well the sheriffs as other, shall be attendant on the justices, to arrest the offenders; on pain of imprisonment and fine to the king, 15 R. 2. c. 2.

4. And if the doors be shut, and they within the house shall deny the justice to enter, it seems he may break open

the house, to remove the force. Dalt. c. 44.

s. And if after such entry made the justice shall find such force; he shall cause the offenders to be arrested. 15 R. 2. c. 2. 8 H. 6. c. 9. f. 2.

6. He shall also take away their weapons and armour, and cause them to be appraised, and after to be answered to the king as forseited, or the value thereof. 2 Ed. 3. c. 3.

7. Also such justice ought to make a record (B) of such force by him viewed; which record shall be a sufficient conviction of the offenders, and the parties shall not be allowed to traverse it: And this record, being made out of the fessions, by a particular justice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace; and M 2

the other part he may keep himself. For this view of the force by the justice, being a judge of record, maketh his record thereof in the judgment of the law, as strong and effectual, as if the offenders had confessed the force before him; and touching the restraining of traverse, more effectual, than if the force had been found by a jury, upon the evidence of others. (That is, as to the fine and imprisonment, but not as to restitution.) 15 R. 2. c. 2. Dalt. C. 44.

8. And the offenders, being arrested (as before is said), shall be put in the next gool (C) there to abide convict by the record of the same justice, until they have made sine and ran-

fom to the king. 15 R. 2. c. 2.

Shall be put in the next gool It is said, that the justice hath no power to commit the offender to gool, unless he do it upon his own view of the sact, and not upon the jury finding the same afterwards. Dalt. c. 44. 1 Haw. 142.

And if such offenders, being in the house at the coming of the justice, shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them

at all upon fuch view. Dalt. c. 44.

But howfoever, if the force be found afterwards, by the inquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after fend them to the gaol, until they have found furcties for the peace. Dalt. c. 44.

Note; Mr. Dalton in this place says, good behaviour, which I have presumed to alter to the peace, as deeming it anuch the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. Dalton hath enlarged more than all other authors, without any affistance from the commission of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] H. I G. 2. K. and Sir Edm. Ellewel. He was brought up upon a habeas corpus, with a return of the cause of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to discharge him upon exceptions to the commitment, the court refused to enter into the consideration of them, till the conviction was likewise regularly removed before them. But by consent he was bailed in the mean time. And this term the conviction being before the court, it appeared that there was no fine set by the justices, and it was thesore moved to be quashed. It was agreed on both sides, that there should be a fine; but it was insisted, that

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Forcible entry and detainer.

it being now before the king's bench by a certiorari, they might fet the fine. But by the court, We are not to execute the judgment of an inferior court. The conviction is to be upon view, and they who view the nature of the force are the properest judges what fine to set; and though a certiorari should come before the fine is set, yet it would be no contempt in the justices to compleat their judgment by setting one. Lambard indeed was of opinion, that the justices could not set the fine at all; but upon what foundation we can never imagine. The justices are not bound to do it upon the spot, but may take a reasonable time to consider of the fine; because by the words of the act, the commitment is to be, till he has paid the fine. The conviction must be quashed, and the defendant discharged.

And the same was likewise solemnly resolved in Leighton's case; and that the justice may affest the same, either

before the commitment or after. I Haw. 142.

And the fine must be affessed upon every offender severally, and not upon them jointly; and the justice ought to astroat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for his majesty's use. Dalt. c. 44.

But upon payment of the fine to the fheriff, or upon furcties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of

prison again at his pleasure. Dalt. c. 44.

9. And so much concerning removing the force: But the party ousled cannot be restored to his possession by the justice's view of the force; nor unless the same force be

found by the inquiry of a jury.

Concerning which it is enacted as follows: And the that the persons making such entry be present, or else departed before the coming of the justice; he may notwithstanding in some good town next to the tenements so entered, or in some other convenient place by his discretion (and that, the ego not to see the place where the force is; Dalt. c. 44.) have power to enquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with sorce. 8 H. 6. c. 9. s. 3.

10. In order to which, the justice shall make his precept (D) to the sheriff, commanding him in the king's hehalf, to cause to come before him, sufficient and indifferent persons, dwelling next about the lands so entered, to enquire of such entries; whereof every man shall have lands or tenements of 40s. a year, above reprizes. And the sheriff shall return

issues on every of them, at the day of the first precept returnable 20 s. and at the second day 40 s. and at the third day 100 s. and at every day after double. And the sheriff making default, shall on conviction before the same justice, or before the judge of assize, for seit 201. half to the king, and balf to him who shall sue, with costs; and moreover shall make sine and ransom to the king. 8 H. 6. c. 9. s. 4, 5.

Before the same justice] And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the king.

Dalt. c. 44.

11. And the defendant also, if he is not present, ought to be called to answer for himself; for it is implied by natural justice in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. I Haw. 154.

12. And it seems to be settled at this day, that if the desendant tender a traverse of the force, the justice ought not to make any restitution, till the traverse be tried.

1 Haw. 154.

13. The defendant may also by the 31 El. c. 11. plead three years possession; whereby it is enacted, that no restitution upon an indictment of forcible entry, or holding with force, shall be made, if the person indicted have bad the occupation, or been in quict possession for three years together next before the indictment found, and his estate therein not determined; and restitution shall stey till that be tried: and if it is found against the party indicted, be shall pay such costs and damages as the judges or justices shall asses; to be recovered as costs and damages in judgments or other actions.

And it hath been holden that the plea of fuch possession is good, without shewing under what title, or of what estate such possession was; because it is not the title, but possession only, which is material in this case. I Haw.

152.

14. And it was holden by the court in Leighton's case, that if the desendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to clude the statute by the tender of such a traverse, and therefore by a necessary construction the justice must needs have this power as incidental to what is expressly given him. I Haw. 142.

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15. And this traverse must be tendered in writing, and not by a bare denial of the fact in words; for thereupon a venire facias must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. Dalt. c. 133. I Haw. 154.

16. Upon which traverse tendred, the justice shall cause a new jury to be returned by the sheriff, to try the traverse; which may be done the next day, but not the same

day. Dalt. c. 133.

17. And it seemeth, that he who tendreth the traverse, shall bear all the charges of the trial; and not the king,

or the party profecuting. Dalt. c. 133.

18. And if such forcible entry or detainer be found (E) before such justice, then the said justice shall eause to reseise (F) the lands and tenements so entered or holden, and shall restore the party put out, to the full possession of the same. 8 H. 6. c. 9. s. 3.

The faid justice It feems to be agreed, that no other justices of the peace, except those before whom the indictment shall be found, shall have any power either at the festions or out of it, to make any award of restitution.

1 Haw. 152.

Shall cause to reseise And the justice may break open the house by force, to reseise the same; and so may the sheriff do, having the justice's warrant. Dalt. c. 44.

Refeife] That is, shall remove the force, by putting out all such offenders as shall be found in the house, or upon the lands, that entered or held with force. Dalt. c. 130.

And shall restore the party put out] And this he may do in his own proper person; or he may make his warrant to the sheriff to do it. Dalt. c. 44. I Haw. 151, 2.

19. And by 21 J. c. 15. it is enacted, that such judges, justices, or justice of the peace, as may give restitution unto tenants of any estate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's service, tenants by elegit, statute merchant and staple, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force.

VI. How punisbable on a certiorari.

Although regularly the justices only who were present at the inquiry, and when the indictment was found, ought to award restitution; yet if the record of the presentment M 4 or indictment shall be certified by the justice or justices into the king's bench, or the same presentment or indictment be removed and certified thither by certiorari, the justices of that court may award a writ of restitution to the sheriff, to restore possession to the party expelled; for the justices of the king's bench have a supreme authority

in all cases of the crown. Dalt. c. 44.

Also where upon a removal of the proceedings into the king's bench the conviction shall be quashed, the court will order restitution to the party injured. As in the case of K. and Jones, M. 8 G. A conviction of forcible entry was quashed for the old exception of message or tenement, by reason of the uncertainty; but the restitution was opposed, on an affidavit that the party's title (which was by lease) was expired since the conviction. But the court said, they had no discretionary power in this case, but were bound to award restitution on quashing the conviction. Str. 474.

VII. How punishable as a riot.

If a forcible entry or detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no inquiry hath before been made of the force. Dalt. c. 44.

A. Indictment for a forcible entry and detainer at common law.

HE jurors for our lord the king upon Westmorland. their oath present, that A. O. late of -in the county aforesaid, gentleman, and B. O. late of the fame, yeoman, together with divers other malefactors and disturbers of the peace of our faid lord the king (whose names to the jurors aforesaid are yet unknown) on theday of _____in the ____year of the reign of ____ with force and arms, at ____aforefaid, in the county aforefaid, unlawfully and injuriously did enter into a certain barn and a certain orchard, then and there being in the possession of one A. I. and that the faid A. O. and B. O. together with the faid other malefactors, then and there, with force and arms, unlawfully and injuriously did expel, amove, and put out the faid A. I. from the possession of the faid barn and orchard, and the faid A. I. so as aforesaid expelled, amoved, and put out from the possession of the said barn and orchard, then and there, with force and arms, unlawfully and injuriously, did keep

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keep out, and still do keep out, to the great damage of him the said A. I. and against the peace of our said lord the king, his crown and dignity.

Indictment on the statute.

HE jurers for our lord the king upon Westmorland. their oath present, that A. I. late of the parish of ____ in the county aforesaid, gentleman, on the ____ day of ___ in the ____ year of the reign of ____ was possessed of a certain messuage, with the appurtenances, situate, lying, and being in——in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come, and unexpired, and being so possessed thereof, one A. O. late of ___in the faid county, yeoman, afterwards, to wit, the faid ___day of ___in the year aforefaid, into the same messuage, with the appartenances aforesaid, in -aforefaid, in the parish and county aforesaid, with force and arms, and with strong hand, unlawfully did enter, and the faid A. I. from the peaceable poffession of the faid mef-Juage, with the appurtenances aforesaid, then and there with force and arms, and with strong band, unlawfully did expel and put out, and the said A. I. from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the faid A. O. him the faid A. I. from the aforefaid _____ day of _____ in the year aforesaid, until the day of the taking this inquisition, from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and still doth keep out, to the great damage of the faid A. I. against the peace of our said lord the king, and against the form of the statutes in that ease made and provided.

Note; If it is a freehold, then the party must be said to be seised thereof in his demesse as of see; and consequently he must be thereof disseised: otherwise if it is of a lesser estate, of which he is not properly said to be seised, but possessed thereof at the will of the lord, according to the custom of the manor, or the like, and then he must be expelled, ejected, amoved, or the like.

B. Record of a forcible detainer upon view.

Note, The books upon the office of a justice of the peace do generally set forth, that the record ought to be

Forcible entry and detainer-

in the present tense, and not in the time past (and herewith do accord the adjudged cases in the court of king's bench, Str. 443.); yet nevertheless they do all exhibit the form of a record in the time past, and not in the present: Therefore I have taken the liberty to alter the same, from the record in L. Raymond of the conviction of Sir Edm. Elwell aforesaid, and others; adding the fine thereunto, for the want of which that conviction was quashed. And I have given the form of a record of a forcible detainer, rather than of a forcible entry, because the justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof until after the entry is made.

Kent, BE it remembred, that on the 15th day of Sep. in to wit. B the first year of the reign of our sovereign lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at Beckingham in the county of Kent aforesaid, Eliz. Elwell, complained to us Sir E. Bettenson, baronet, P. Burrel, and W. Passenger, esquires, three of the justices of our said lord the king assigned to keep the peace in the faid county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the faid county committed, that Sir Edm. Elwell, late of London, baronet, Joseph Billers, late of—and Daniel Monty, late of—into the messuage of her the said E. E. being the mansion house of her the said E. E. called Langley house, situate within the parish of Beckingham aforesaid, did enter, and her the said E. E. of the messuage aforesaid, whereof the faid E. E. at the time of the entry aforefaid, was feifed as of the freehold of her the faid E. E. for the term of her life, unlawfully ejected, expelled, and amoved, and the faid meffuage from her the faid El. E. unlawfully, with firing hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided; whereupon the same El. E. then, to wit, on the said 15th day of Sep. at the parish of B. aforesaid, prayeth of us, so as aforesaid being justices, to her in this behalf that a due remedy be provided, according to the form of the statute aforesaid: Which complaint and prayer by us the aforesaid justices being heard, we the aforesaid E. B. baronet, P. B. and W. P. esquires, justices aforesaid, to the messuage aforesaid personally have come, and do then and there find and see the aforesaid Edm. E. J. B. and D. M. the aforesaid messuage, with force and arms, unlawfully, with strong hand and armed power, detaining, against the form of the statute in such case made and provided, accord-

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ing as she the same El. E. so as aforesaid bath unto us complained: Therefore it is considered by us the aforesaid justices, that the aforesaid Edmund Elwell, Joseph Billers and Daniel Monty, of the detaining aforesaid with strong hand, by our own proper view then and there as is aforefaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid; Whereupon we the justices aforesaid, upon every of the aforesaid Ed. E. J. B. and D. M. do set and impose severally a fine of 101. of good and lawful money of Great Britain, to be paid by them and every of them severally to our said sovereign lord the king, for the said offences; and do cause them, and every of them, then and there to be arrested; and the same Ed. E. J. B. and D. M. being convicted, and every of them being convicted upon our own proper view, of the detaining aforesaid, with strong hand as is aforesaid, by us the aforesaid justices are committed, and every of them is committed, to the gool of our faid lord the king, at Maidstone in the county of Kent aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively, to our faid lord the king, for their respective offences aforesaid. Concerning which the premisses aforesaid, we do make this our record. In witness whereof, we the aforesaid E. B. baronet, P. B. and W. P. esquires, the justices aforesaid, to this record our hands and feals do fet, at the parish of B. aforesaid, in the county of Kent aforesaid, on the 15th day of Sep. in the first year aforesaid of the reign of our said sovereign lord the now king.

C. Mittimus for forcible detainer.

Westmorland. E DWARD Hassel, esquire, one of the justices of our sovereign lord the king's majesty, assigned to keep the peace within the said county of W. and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the keeper of his majesty's gaol at——in the said county, and to his deputy and deputies there, and to every of them, greeting. Whereas upon complaint made unto me this present day, by A. I. of——in the said county, yeoman, I went immediately to the dwelling house of the said A. I. at——aforesaid in the said county, and there sound A. O. late of—labourer, B. O. late of the same, weaver, and C. O. late of—butcher, forcibly with strong hand and armed power, holding the said house, against the peace of our said

Foscible entry and detainer.

Note; By the forms in all the books, all the offenders frand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.

D. Precept to the sheriff to return a jury.

Westmorland. HENRY Aglionby, esquire, one of the justices of our lord the king, assigned to keep the peace in the faid county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the faid county committed; To the sheriff of the faid county, greeting: On behalf of our faid lord the king, I command you, that you cause to come before me at ____ in the county aforefaid, on the day of next infuing, twenty-four fufficient and indifferent men, of the neighbourhood ofeforesaid, in the county aforesaid, every of whom shall have lands or tenements of 40 s. yearly at the least, above reprizes, to inquire upon their oaths for our faid lord the king, of a certain entry made with strong hand (as it is faid) into the mefsuage of one A. I. at ____aforesaid, in the county aforefaid, against the form of the flatute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impanelled, 20 s. of issues at the aforefaid day. And have you then there this precept. And this you shall in no wife omit, upon the peril that shall thereof infue. Witness the faid H. A. at-in the county aforefaid, the day of in the year of the reign

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YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry [or detainer] said to have been lately committed in the dwelling bouse of yeoman, at in this county; you shall spare no one for favour or affection, nor grieve any one for batred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you god.

The oath that A. F. your foreman hath taken on his part, you and every of you shall truly observe, and keep on your

parts : So help you god.

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E. The inquisition, indictment, or finding of the jury.

Westmorland. A N inquisition for our sovereign lord the king, indented and taken at _____in the faid county, the day of in the year of the reign of by the oaths of good and lawful men of the faid county, before J. P. afquire, one of the justices of our said lord the king, assigned to keep the peace in the faid county, and olfo to hear and determine divers felonies, trefpaffes, and other misdemeanors in the same county committod, who fay upon their oaths aforefaid, that A. I. ofeforefaid, yeoman, long fince lawfully and peaceably was feifed in his demesne as of see [if it is not freehold, then say, possessed of and in one messuage, with the appurtenances, in-aforefaid, in the county aforefaid, and his faid possession [and feifin] so continued until A. O. late ofyeoman, B. O. late of the same, yeoman, and C. O. late of the same, yeaman, and other malefactors unknown, the - day of now last past, with strong hand and armed power, into the meffuage aforefaid, with the appursenances aforefaid, did enter, and him the faid A. I. thereof differfed, and with strong hand expelled; and him the faid A. I. so differsed and expelled from the said messuage with the appurtenances aforesaid, from the said -- day ofuntil the day of the taking of this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our faid lord the king,

Forcible entry and detainer.

and against the form of the statute in such case made and provided.

We whose names are hereunto set, being the jurors abovefaid, do upon the evidences now produced before us, find the inquisition aforesaid true.

A. B. C. D. &c.

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F. Warrant to the sheriff for restitution.

Westmorland. HENRY Fletcher, esquire, one of the justices of our sovereign lord the king, affigned to keep the peace in the faid county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the faid county committed; To the sheriff of the faid county, greeting: Whereas by an inquisition taken before me the justice aforesaid, at——in the county aforesaid, on this present ——day of——in the——year of the reign of upon the oaths of --- and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found, that A. O. late of yeoman, and B. O. late of yeoman, on the day of now last past, into a certain meffuage, with the appurtenances, of A. I. of ____aforesaid, in the county aforesaid, gentleman, fituate, lying, and being at-aforefaid, in the county aforesaid, with force and arms did enter, and him the said A. I. thereof then with strong hand did diffeise and drive out, and him the faid A. I. thus driven out from the aforefaid messuage, with the appurtenances, from the-day ofaforefaid, to this present day of the taking of the faid inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth of record: Therefore on the behalf of our faid fovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the said messuage and other the premisses, and the same with the appurtenances you cause to be reseised, and that you cause the faid A. I. to be restored and put into his full possession thereof, according as he, before the entry aforefaid was feifed, according to the form of the faid statutes. And this you shall in no wife omit, on the penalty thereon incumbent. Given under my hand and feal at-in the faid county, the-day of -year of the reign of-

Foreign

Foreign Cerbice.

BY the 5 G. c. 27. If any person shall contract with, Artificers. entice, or endeavour to persuade any manusacturer or artificer in wool, iron, steel, brass, or any other metal, clockmaker, watchmaker, or any other artificer or manusacturer, to go out of this kingdom, into any foreign country out of his majesty's dominions, and shall (on prosecution in 12 months) be convicted thereof on indictment or information, in the courts at Westminster, affizes or sessions of the county where the offence shall be committed; he shall for the first offence be fined not exceeding 100 stand be imprisoned for three months, and until the sine be paid; for the second offence, shall be fined at the discretion of the court, and be imprisoned 12 months, and till the sine is paid. f. 1, 2.

And if any subject, being such artificer or manufacturer, shall go into any country out of his majesty's dominions, to exercise or teach any the said manufactories to foreigners, or if any subject who shall be in any such foreign country, and there exercise any the said manufactories, shall not return in six months next after warning be given him, by the ambassador, minister, or consul, or person authorized by him, or by a secretary of state, and from thenceforth continually inhabit within this realm; he shall be incapable of any legacy, or of being executor, or administrator, and of taking any lands, by descent, devise, or purchase, and forfeit his lands and goods, and be deemed an alien, and out of the king's

protection. J. 3.

And on complaint on oath before a justice, that any person is endeavouring to seduce or draw away any such manufacturer or artiscer, or that he hath contracted or is preparing to go out of the kingdom; he may issue his warrant to bring such person before him or some other justice; and if it shall appear to such justice by confession, or the oath of one witness, that such person was guilty of any the said offences, he may bind him over to the next affizes or sessions, to answer the premisses; and if he shall upon indictment be there convicted of any such promise or contract, or preparation to go abroad beyond the seas, he shall give such security, not to depart out of the realm, as such court shall think reasonable, and be imprisoned until such security be given. s. 4.

And

Foreign ferbice.

And by the 23 G. 2. c. 13. If any person shall contract with, or endeavour to persuade or seduce any artificer in the manusactures of Great Britain, to go into any foreign country, not belonging to the crown of Great Britain; and shall be thereof convicted, in twelve months, in the king's bench, or at the affizes; he shall for every such person forseit 500 l. and be imprisoned in the common gaol for twelve months, and till payment of the forseiture; and for a second or other subsequent offence, shall forseit 1000 l. and be imprisoned two years, and till payment. s. 1, 2.

And if any person shall put on board any vessel not bound directly to some of the British dominions, any tools or utensils, or part thereof proper for either the woollen or silk manufactures; he shall forseit the same and 200 l.

And any officer of the customs may seize, and secure in some of the king's warehouses, all such tools and utensils as shall be found on board any such vessel; and the same, after condemnation, shall be publickly sold. id. s. 4.

And if the master or captain shall knowingly permit any the said tools or utensils to be put on board his ship; he shall forseit 100 l. and if it is a king's ship he shall also forseit his office, and be incapable of any office under the crown. id. s. 5.

And if any officer of the customs shall take any entry outward or sign any sufferance for shipping or exporting any the said tools, or knowingly permit the same to be done; he shall forseit 100 l. and his office, and be incapable of any office under the crown. id. s. 6.

All which faid penalties, on this act shall be half to the king, and half to him that shall profecute. id.

2. If any subject shall inlist or enter himself, or shall engage to go beyond the seas or embark with intent to inlist and enter himself, altho' no inlisting money be actually paid to him; or if any person shall procure any subject to enlist or enter himself, or hire or retain any subject, with intent to cause him to inlist or enter himself, or retain, engage, or procure any subject (tho' no inlisting money be paid) to go beyond the seas or imbark with intent and in order to be inlisted to serve any foreign prince, state or potentate, as a soldier, without his majesty's leave; he shall be guilty of selony without

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Foreign Cervice.

but benefit of clergy. 9 G. 2. c. 30. f. 1. 29 G. 2.

And offences committed out of the realm may be tried

in any county in England. 9 G. 2. c. 30. f. 2.

But if any person so inlisted, or inticed to go beyond the seas in order to be inlisted, as a non-commission officer or private soldier, in any foreign service, shall in fourteen days voluntarily discover upon oath, before any justice or other civil magnificate, the person by whom he was inlisted or enticed, so as he be convicted, he shall be indemnified. s. 3.

Fozestalling, ingrossing, and regrating.

Porestalling (forestællan, or forestallan) in the English, Derivation, Saxon signifieth properly to market before the publick, or to prevent the publick market; and metaphorically, to intercept in general: and seemeth derived from fore, which is the same as before, and stalle a standing place or department; from whence sprang the antient word stallage, which signifieth money paid for erecting a stall or stand, for the selling of goods in a fair or market:

Ingrossing is from in, and gross, great or whole:

And regrating, from re, again, and the French grater, to grate or scrape; and signifieth the scraping or dressing of cloth or other goods, in order for selling the same again.

I shall treat, first, concerning these offences at the common law; and, secondly, concerning the same by

Matute

I. Concerning these offences at common law.

r. At the common law, all endeavours whatfoever to Thefe offences enhance the common price of any merchandize, and all at common law. kinds of practices which have an apparent tendency thereto whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same things in the same market, or by any other such like devices, are highly critically.

minal, and punishable by fine and imprisonment. I Haw.

234, 5.

2. By the common law, a merchant bringing victuals into the realm, may fell the fame in gross; but no person can lawfully buy within the realm any merchandize in gross, and fell the same in gross again, without being liable to be indicted for the same. 3 Inst. 196.

3. And the bare ingroffing of a whole commodity, with an intent to fell it at an unreasonable price, is an offence indictable at common law, whether any part thereof be

fold by the ingroffer or not. 1 Haw. 235.

4. And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf; perhaps for this reason, because by such means the market is in effect forestalled. 1 Haw. 235.

5. Anciently the ingroffer and regrator were comprehended under the word forestaller; but now they are dis-

tinguished by the following statute.

By fatute:

II. Concerning these offences by statute.

Forestalling,

1. Whosoever shall buy or cause to be bought, any merchandize, victual, or any other thing what soever, coming by land or by water toward any market or fair, to be fold in the same, or coming toward any city, port, haven, creek, or road, from any parts beyond the sea to be fold; or make any bargain, contract or promise, for the baving or buying the same, or any part thereof so coming as is aforesaid, before the said merchandize, victuals, or other things shall be in the market, fair, city, port, haven, creek or road, ready to be fold; or shall make any motion by word, letter, message, or otherwise, to any person for the inhancing of the price, or dearer selling of any thing abovementioned; or elfe diffuade, move, or flir any person coming to the market or fair, to abstain or forbear to bring or convey any of the things above rehearsed; to any market, fair, city, port, baven, ereek, or road to be fold, as aforefaid, -- shall be deemed a forestaller. (A) 5 & 6 Ed. 6. c. 14. f. 1.

Ingroffing, what.

2. Whosoever shall ingross, or get into his hands by buying, contracting, or promise-taking, other than by demise, grant, or lease of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, to the intent to sell the same again, shall be deemed an unlawful ingrosser. (B) 5 & 6 Ed. 6.

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f. 10.

And it is faid not to be fufficient in an indictment of information, to fay that the defendant bought fo much goods, but the words of the statute are to be purfued, which are -- shall ingross or get into his hands by buying. But it is not necessary to set forth, that the defendant did not come by it by a demise of land, or the like; but the defendant, if he have any fuch matter to alledge, must

give it in evidence. 1 Haw. 237, 238.
3. Whosoever shall by any means regrate, obtain, or get Regrating, what into his hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, fwine, pigs, geefe, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be fold, and do fell the same again in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be deemed a regrater. (C) 5 & 6 Ed. 6. c. 14.

4. And if any shall be guilty of any the said offences, Penalty; he shall for the first offence be imprisoned two months, and forfeit the value of the goods; for the fecond offence, be imprisoned half a year, and forfeit double value; and for the third offence, shall be fet on the pillory forfeit all his goods and be imprisoned during the king's pleasure. . 5 & 6 Ed. 6. c. 14. f. 4, 5, 6.

Half the faid forfeitures to go to the king, and half to him that will fue, in two years after the offence. id.

1. 9, 14.

And the fessions may hear and determine the same, by inquisition, presentment, bill, or information, and by examination of two witnesses, and may make process thereupon, as though they were indicted; and effreat the king's moiety, and award execution of the other moiety for the party, by fieri facias, or capias, as the courts at Westminster may do: And if any conviction or attainder shall be at the king's suit only, then the whole forfeitures shall be estreated and levied to the king's use.

5. From hence it feems clearly to follow, as well as Form of the infrom the general rules of law, that no information for dictment or inany of the faid offences against the said statute can be good, without shewing in certain the quantity of the thing for which the penalty is supposed to be incurred, not only because otherwise the judgment to be given on fuch an information can never be pleaded in bar of any other, because it cannot appear that both of them were

brought

brought for the same thing; but also because it cannot appear to the court what forfeiture the defendant ought to incur, unless the extent of the offence be specially set

forth. 1 Haw. 238.

Exceptions and limitations,

6. Provided, that the buying of any fuch barley, bigg, or oats as any person (not forestalling) shall buy to convert into malt or oatmeal, in his own house, and so shall be converted indeed; or the buying of any fuch thing by any fuch fishmonger, butcher, or poulterer, as concerneth his own faculty, craft, or mistery (otherwise than by forestalling) which shall fell the same again upon reasonable prices by retail; or the taking of any cattle, corn, grain, butter, cheefe, or any other thing abovementioned, referved without fraud upon any leafe for lives or years; or the buying of any wine or other dead victual above mentioned, being apt and meet for man's fustenance, by any innholder or other victualler, to fell the same by retail within his house, or to any of his neighbours for their suftenance, for reasonable prices; or the buying of any dried or falted fish, berring or sprats (not forestalled) and fold for reasonable prices; or the buying of any corn, fish, butter or cheese, by any badger, lader, kidder, or carrier duly licensed, who shall sell or deliver in open fair or market, or to any other victualler, or to any other person, for the provision of his house, all such corn, grain, butter and cheese as he shall buy or cause to be bought, and that within one month next after he shall so buy any such corn, grain, butter or cheefe, fo that the same shall be bought without forestalling; or else that any common provision to be made without fraud by any person, of any the things abovefaid, for any city, borrough, or town corporate, or for provision of victualling of any ship, castle, or fort within the king's dominions, without forestalling, which shall be employed only to that use; -- shall not be deemed an offence contrary to this act. 5 & 6 Ed. 6. c. 14. J. 7.

And if any person, having sufficient corn and grain for the provision of his own house and sowing of his grounds for one year, do buy any corn in any fair or market, for the change of his feed, and do not bring to the same fair or market the same day so much corn as he shall fortune to buy for his feed, and fell the fame if he can as the price of corn then goeth in the faid market or fair; every fuch person so buying corn for seed, shall forfeit double the value of the corn so bought; to be levied and disposed in

manner aforefaid. J. 8. 11 Amen out and the man of the

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Fozestalling, ingroffing, &c.

And if any person shall buy any oxen, ronts, steers, kine, heifers, calves, sheep, lambs, goats, or kids living, and sell the same again alive, unless he keep and feed the same for five weeks in his own house, ground, ferm-ground, or such ground where he hath the herbage or common of pasture by grant or prescription; he shall for-feit double the value of the cattle or things so bought and sold again: to be levied and disposed in manner aforesaid.

1. 9.

Provided, that it shall be lawful to persons duly licensed, to buy (otherwise than by forestalling) corn, grain, or cattle, to be transported or carried by water from any port or place within England or Wales, to any other port or place within the faid dominions, if he shall without fraud ship or embark within 40 days next after he shall have bought the same, or taken covenant or promise for the buying thereof; and with fuch expedition and diligence as wind and weather will ferve do carry and transport the fame, to fuch port or place as his cocket shall declare; and there do difbark, unlade, and fell the fame; and bring a certificate thereof from a justice of the county, or mayor of the town corporate where the fame shall be unladen, and also of the customer of the port where such unlading shall be, of the place and day where the faid corn or cattle shall be disbarked, unladen, and fold, to be directed to the customer and comptroller of the port where the same J. 12. were embarked.

And provided, that it shall be lawful to any person dwelling within a mile of the main sea, to buy all manner of fish, fresh or salted (not forestalling the same), and to sell the same again at reasonable prices. s. 15.

And provided, that licensed drovers may buy cattle in such counties where they have been wont to buy the same, at their free liberty and pleasure; and to sell the same, as is aforesaid, at reasonable prices in common fairs and markets distant from the place where they shall buy the same 40 miles at the least: so that the same be not bought by way of forestalling. s. 16.

Also the said act shall not extend to wines, oils, sugars, spices, currans, nor other foreign victuals; fish and salt

only excepted. 13 El. c. 25. f. 21.

And by the 15 C. 2. c. 7. When the quarter of wheat (Winchester measure) doth not exceed 48 s. rye 32 s. barley or malt 28 s. buck wheat 28 s. oats 13 s. 4 s. pease or beans 32 s. any person (not forestalling, nor selling the same again in the same market in three months) may buy

N 3

Forestalling, ingrolling, &c.

fuch corn, in open market, at or under such price, and lay it up, and sell the same again, without incurring any penalty. f. 4.

Also, it hath been resolved, that such victual only, as is necessary for the food of man, is within the aforesaid statute of 5 & 6 Ed. 6. and therefore that apples and cherries, and such like fruit are not: but that salt is a victual

within the meaning of it. I Haw. 237.

Information may be laid in any county.

7. By 31 El. c. 5. which ordains that informations for offences against penal statutes, must be laid in the proper county, it is provided, that nevertheless an information on the said statute of Ed. 6. against forestalling, ingrossing, or regrating, where the penalty shall appear to be 20 l. or above, may be laid out of the proper county, and in any other county at the pleasure of the informer.

A. Indictment for forestalling.

Westmorland. THE jurors for our lord the king upon their oath present, that A. O. late of the parish of ______ in the county aforesaid, yeoman, on the ______ day of _____ in the _____ year of the reign of _____ at the parish aforesaid, in the county aforesaid, did buy and cause to be bought of and from one A. S. twenty oxen, for the sum of 2001. of lawful money of Great Britain, as he the said A. S. then and there was driving the said twenty oxen towards the market of M. to sell the said twenty oxen in the said market, and before the said twenty oxen were brought into the said market, where the same should be sold; in contempt of our said lord the king and his laws; to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and against the form of the statute in that case made and provided.

B. Indictment for ingroffing.

Westmorland. THE jurors for our lord the king upon their oath present, that A.O. late of ______ in the county aforesaid, yeoman, on the ______ day of _____ in the _____ year of the reign of _____ at ___ aforesaid, in the county aforesaid, did ingross and get into his hands, by buying of and from one A.S. 50 quarters of wheat, to the intent to sell the same again; to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and against the form of the statute in that case made and provided.

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C. Indictment for regrating.

Westmorland. THE jurors for our lord the king upon their oath present, that A. O. late of rish of ____ in the county aforesaid, yeoman, on the ___ year of the reign of __ at the parish aforesaid, in the county aforesaid, to the parish of wit, in a certain market then and there holden, did buy, obtain, and get into his hands and possession ten geese and twenty chickens, of and from one A. S. for the sum of 30s. of lawful money of Great Britain (the said geese and chickens then being brought to the said market by the said A. S. to be fold); and that afterwards, to wit, on the same day of --- in the year aforesaid, he the said A. O. at the parish aforesaid, in the county aforesaid, in the said market there, unlawfully did regrate the said geese and chickens, and sell the same again to one A. B. for the sum of 40 s. of like lawful money of Great Britain, in contempt of our faid lord the king and his laws, to the evil example of all others in the like case offending, against the peace of our said lord the king, and against the form of the statute in that case made and provided,

Forests. See Same

Fozfeiture.

The forfeitures for particular offences may be found under their respective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.

II. Of loss of dower.

III. Of corruption of blood.

Of forfeiture of lands and goods.

Forfeiture of lands.

Forfeiture of goods.

T feems agreed, that by the common law, all lands of inheritance, whereof the offender was seised in his own right, and also all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treason, and to the lord of whom they are immediately holden, by an attainder of petit treason or felony. 2 Haw. 448.

But it seems clear, that the lord cannot enter into the lands holden of him, upon an escheat for petit treason or felony, without a special grant, till it appear by due process, that the king hath had his prerogative of the year,

day, and waste. 2 Haw. 448.

Concerning which year, day, and waste, it is enacted by the 17 Ed. 2. c. 16. that the king shall have the goods of all felons attainted, and fugitives, wherefoever they be found. And if they have freehold, it shall be forthwith taken into the king's hands, and the king shall have all profits of the same by one year and one day; and the land shall be wasted and destroyed in the houses, woods, and gardens, and in all manner of things, belonging to the fame land. And after the king hath had the year, day, and waste, the land shall be restored to the chief lord of the fee, unless that he fine before with the king, for the year, day, and waite.

2. As to forfeiture of goods, it feems agreed, that all things whatfoever, which are comprehended under the notion of a personal estate, whether they be in action or possession, which the party hath, or is intitled to, in his own right, and not as executor or administrator to another. are liable to fuch forfeiture, in the following cases:

(1) Upon a conviction of treason or felony. 2 Haw.

(2) Upon a flight found before the coroner, upon view of a dead body. id.

(3) Upon an acquittal of a capital felony, if the party

is found to have fled. id.

(4) Also a person indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in case of grand larceny. 'I H. H. 530. 2 Haw. 451.

But it is certain that the party may in all cases, except that of the coroner's inquest, traverse the finding of the flight. Also it seems agreed, that the particulars of the goods found to be forfeited may be also traversed. 2 Haw. 451.

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(5) Upon a presentment by the oaths of 12 men, that a person arrested for treason or felony, fled from, or resisted those who had him in custody, and was killed by them in

the pursuit or scuffle. 2 Haw. 451.

(6) By being waived or left by a felon in his flight. whereby he forfeits the goods fo waived, whether they be his own, or the goods of others stolen by him, which shall not be restored to the right owners but upon a proper profecution. 2 Haw. 451.

(7) Also, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. 2 H. H. 388, 389.

But on burning in the hand, he ought to be immediately restored to possession of his lands. 2 H. H. 389.

3. Upon outlawry in treason or felony, the offender Forfeiture upon shall lose and forfeit as much as if he had appeared, and outlawry. judgment had been given against him, as long as the outlawry is in force. Wood b. 4. c. 5.

And those that tarry till the exigent, in treason, felony, or petit larceny, forfeit their goods, though they render themselves to justice, and are acquitted; for it was a slight

in law. Wood b. 4. c. 5.

4. But where the killing a man in his own defence is in Forfeiture in fe the law no felony, there is no forfeiture; unless he fled; defendendo. for that is a distinct forfeiture, although the party be not

guilty of the fact. 1 H. H. 493.

5. It feems agreed, that the forfeiture, upon an attain- To what time der either of treason or felony, shall have relation to the the forfeiture time of the offence, for the avoiding of all subsequenc shall relate. alienations of the lands; but to the time of the conviction or flight found only, as to chattels; unless the party were killed in flying or refifting, in which case it is said, that the forfeiture of the chattels shall relate to the time of the offence. 2 Hav. 454.

6. But though the goods of an offender be not forfeited, What is to be till the conviction, or flight found by inquest, yet whe-done with the ther they may be seized upon the offence committed, hath felon's goods bebeen controverted; concerning which lord Hale faith fore forfeiture.

thus :

It seemeth clear, that at the common law, if a man had committed felony or treason, or tho' possibly he had committed none, yet if he had been indicted, the sheriff, coroner, or other officer, could not feize and carry away the goods of the offender or party accused:

Again, he could not in that case have removed the goods. out of the custody of the offender or party accused, and deliver them over to the constables or to the villata, to answer for them:

But if the party were indicted, the sheriff or other officer might make a simple seizure of them only to inventory and appraise them, and leave them to the custody of the servants or bailiff of the party indicted, in case he would give security against their being imbezilled, or in default thereof he might deliver them to the constable or vill to be answerable for them, but yet so that the party accused and his samily have sufficient out of them for their livelihood and maintenance.

And possibly the same law was, tho' he were not indicted, but de facto had committed a felony, but with this difference, if he had been indicted, this kind of seizure might have been made, whether he committed the felony or not.

- But in case there were no indictment, then it is at the peril of him that seizeth, if he committed not the selony:

And then as to the statute of 1 R. 3. c. 3. it is as follows; No sheriff or other person shall take or seize the goods of any person arrested or imprisoned for suspicion of selony, before he be convicted or attainted, or before the goods be otherwise forfeited; on pain of double value to the party grieved:

Mr. Stamford thinks this is but in affirmance of the common law, only that it gives a penalty: but it feems to be fomewhat more than fo, for this prohibits the feizure of the goods of a party imprisoned, tho' he were also indicted, but not yet convicted, where unquestionably the common law allowed such a seizure, if the party or his friends did not secure the forthcoming of the goods, where the party was indicted.

But upon this statute these things are considerable; r. As to persons at large, it seems to me (says he) that if they style fly not, there can be no seizure at all made, whether they are indicted or not; for the statute did not intend a greater privilege to a party imprisoned, than to him that is at large.

2. That if he be at large, and sty for it, yet his goods cannot be seized and removed, whether he be indicted or not indicted.

3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraised, and inventoried, in the house or place where they lie:

And yet I know not how it comes to pass, says he, the use of seizing the goods of persons accused of selony, tho imprisoned or not imprisoned, hath so far obtained not-withstanding this statute, that it passets for law and common practice, as well by constables, sheriffs, and other the king's

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king's officers, as by lords of franchifes, that there is no-

thing more usual:

Upon the whole, he says, that the opinion of my lord Coke, in his 3 Inst. 228. hath truly stated the law, at least, as it stands upon the statute of 1 R. 3. viz. 1. That before the indictment, the goods of any person cannot be searched, inventoried, or in any sort seized. 2. That after the indictment, they cannot be seized and removed, or taken away, before conviction or attainder:

But then it may be faid, to what purpose may they be fearched and inventoried after indictment, if they may not be removed, but are equally liable to imbezilling as before:

I think (he says) he is not bound to find sureties, neither hath the officer at this day any power to remove them in default of sureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unless in case of a second capias on the 25 Ed. 3. c. 14.) for the prisoner or party indicted may sell them bona side; and if he may do so, the vendee may take them, and the villata cannot refuse the delivering of them to the vendee, tho' the goods had been delivered to them:

But there is this advantage by the viewing and appraifing, that thereby the king is ascertained what the goods are, and may pursue them that take or imbezil them, by information (if the party happen to be convict) and try the property with them, whether they are really sold, or sold only fraudulently without valuable consideration, to prevent the forfeiture. 1 H. H. 363, 4, 5, 6, 7.

II. Of loss of dower.

1. Albeit a person shall be attainted of felony, yet his Forseiture of wise shall not forseit her dower. 1 Ed. 6. c. 12. f. 17. dower in selony.

2. But on his attainder of treason, she shall forfeit her In treason. dower. 5 & 6 Ed, 6. c. 11. f. 13. But in some kinds of treason (particularly with regard to the coin) there is a special saving of the wise's dower by statute.

III. Of corruption of blood.

1. It is agreed, that by an attainder of treason or fe- corruption of lony, the blood is so far stained or corrupted, that the blood party loses all the nobility or gentility he might have had before, and becomes ignoble. 2 Haw. 456.

2. Also, that he can neither inherit as heir to an ance-

ftor, nor have an heir. 2 Haw. 456.

3. But

3. But the king's pardon, tho' it doth not restore the blood, yet as to issues born after, hath the effect of a restitution. r.H. H. 358.

4. But reflitution of blood in its true nature and extent, can only be by act of parliament. 1 H. H. 358.

2 Haw. 458.

Forgery. when a forgery.

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E. FORGERY is an offence at common law, and an

2. Forgery at the common law, is an offence in falfly and fraudulently making or altering any manner of record, or any other authentick matter of a publick nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, and the like.

1. How. 182, 184.

As for writings of an inferior nature, as private letters, and such like, the counterfeiting of them is not properly forgery; therefore in some cases it may be more safe to prosecute such offenders for a misdemeanor, as cheats. For by reason of the uncertainty of opinions, concerning proper forgeries at common law, indictments are generally brought upon some of the following statutes, and very sew at common law. But if the indictment is at common law, and the offender is convicted, he may be pilloried, fined, and imprisoned. Wood b. 3. c. 2. I Haw. 184.

But as to the power of justices of the peace in this matter, Mr. Hawkins says, it hath been settled of late, that they have no jurisdiction over forgery at the common law; the principal reason of which resolution (he says) as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word trespass in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only in the commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. 2 Hawas 1 Salk. 406.

But Mr. Barlow says nevertheless, that it seemeth clear, that a justice of the peace may take an information there-

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of, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to prison in order to abide his trial. Barl. 244.

3. The statutes that make forgery an offence are these

that follow:

The first is that famous statute of the 5 El. c. 14. which by an example worthy to be imitated, doth (in order to prevent confusion) repeal all former statutes against forgery. By this it is enacted, that if any person upon his own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly, and falsely forge or make, or subtilly cause, or willingly assent to be forged or made, any false deed, charter, or writing fealed, court roll, or the will of any perfon in writing, to the intent that the effate of freehold, or inberitance of any person, of any lands, tenements, or bereditaments, freehold or copyhold, or the right, title, or interest of any person in the same may be molested, troubled, defeated, recovered, or charged; or shall pronounce, publish, or shew forth in evidence the same as true, knowing the same to be false or forged, to the intent as above (except lawyers or attornies for their clients, not being privy to the forgery); and shall be thereof convicted, either upon action at the suit of the party, or otherwise according to the order and due course of the laws of this realm, - he shall pay to the party double costs and damages, and be set in the pillory, and have both his ears cut off, and his nostrils slit and seared with a hot iron, and shall forfeit the profits of his lands during life, and be imprisoned also during life. f. 2.

And all justices of over and terminer, and justices of assize, shall have power to inquire of, hear, and determine all offences

in this act. f. 10.

Profit housing that he

Upon his own head] When the proceedings were in latin fuper proprium fuum caput was allowed to be good upon an indictment on this statute; the law having more regard that the statute be strictly pursued, than rendred into proper latin. 1 Haw. 187.

Forge or make] Making a second deed, and antedating it, with intent to make it take place of a former deed, is forgery within this statute. 3 Inft. 167.

Or fubtilly cause, or willingly assent] To cause, is to procure or counsel one to forge; to assent, is to give his affent or agreement afterwards, to the procurement or counsel of another; to consent, is to agree at the time of the procurement or counsel, and such is in law a procure: 3 Inst. 169.

But lord Hale says, that an affent after the fact is committed, makes not the party affenting guilty or principal in the forging; but it must be a precedent, or concomitant affent. I H. H. 684.

False deed, charter, or writing] It seems to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterseited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. I Haw. 184.

Writing scaled These are large words; and the making of a false customary of a manor in writing under scal, containing divers false customs, to the disherison of the lord of the manor, and that the same had been allowed and permitted by the lord of the manor, which was also false, was resolved to be within these words a false writing scaled. 3 Inst. 171.

Sealed] It is required that the deed, charter, or writing must be sealed, that is, have some impression upon the wax; for wax, without an impression is not a seal. 3 Inst. 169.

Court roll, or will] Here are two writings which need not be fealed, because they may take effect without any seal, for that they be no deeds; and no writing can have the force of a deed without a seal. 3 Inst. 170.

Will] If any person which writeth the will of a sick man, inserteth a clause therein concerning the devise of lands, without any direction of the devisor, this is forgery, altho' he did not forge the whole will. 3 Inst. 170.

To the intent that the state of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same may be molested, troubled, defeated, recovered, or charged | E. 4 G. 2. K. and Japhet Crooke. The defendant was convicted on this statute for forging a lease and release. And the indictment sets forth, that Garbut and his wife were seised in see of certain messuages, lands, and tenements called Jawick in the parish of Clackton in Essex, and that the desendant intending to molest them and their interest in the premisses, forged a lease and release as from Garbut and his wife, whereby they are supposed for a valuable

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luable confideration to convey to him " all that park " called Jawick park in the parish of Clackton in Essex, " containing eight miles in circumference, with all the " deer, woods, &c. thereto belonging." It was moved in arrest of judgment, that the premisses supposed to be conveyed, were fo materially different from those which were really the estate of Garbut and his wife, which was houses, lands, and tenements; that it was impossible this conveyance ever could molest or disturb them: if it was a true deed, it could not pass their lands at law, for want of a proper description; and though where lands are improperly described, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a fale, and they do it as carrying that contract into execution. The court for several terms inclined strongly with the objection; but this term Raymond Ch. J. declared that they were all of opinion to over-rule it: for by the words of the act, it is not necessary that there should be a charge or a possibility of a charge: it is fufficient that it be done with that intent, and the jury have found that it was done with intent to molest Garbut and his wife in the possession of their lands. Accordingly judgment was given for the king, and the defendant had sentence to undergo the punishment appointed by the act for forging a deed, and the fame was executed upon him at Charing-cross. Str. 901.

Pronounce or publish That is, when one by words, or writing pronounceth or publisheth the deed to any other as true. 3 Inft. 171.

Knowing the same to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publish it afterwards as true, and it prove to be forged indeed, he is in danger of this statute. 3 Inst. 171. 1 Haw. 187.

But lord Hale says, that the fuch a relation may be an evidence of fact to prove his knowledge, yet it is not conclusive; for perchance there might be circumstances of fact, that might make the person relating it, or his relation, not credible: So that the knowing must be upon the whole matter lest to the jury, upon the circumstances of the case. 1 H. H. 685.

by their commission, have power to hear and determine felonies

felonies and trespasses, yet they are not included under the name of justices of over and terminer; for justices of over and terminer are known by one diffined name, and

justices of the peace by another. 3 Inft. 103.

And by the same statute it is further enacted, that if any person, upon his own head or imagination, or by false conspiration or fraud with any other, shall wittingly, subtilly, and falfly forge or make, or cause or affent to be made and forged any falle charter, deed or writing, to the intent that any person may have or claim any estate or interest for term of years in any manor's, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee-simple, fee-tail, or for term of life, lives, or years; or any obligation, or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, fuit, demand, or other thing personal; or shall pronounce, publish, or give the same in evidence as true, knowing the same to be false and forged; be shall, on conviction in like manner, pay to the party double costs and damages, and be set on the pillory, and have one of his ears cut off, and be imprisoned for a year. 1. 3.

Obligation or bill obligatory] The forgery of a deed of gift of mere personal chartels, is not within this statute.

1 Haw. 186.

And if after verdiet, the plaintiff shall release the judgment or execution, or suffer a discontinuance, it shall only discharge his own costs and damages, and not the other punishments. S. 6.

And by the same statute it is further enacted, that if any person shall after conviction offend again in any of the ways abovementioned, he shall be guilty of felony without benefit of

clergy. f. 7, 8.

4. Thus stood the matter upon the statute of 5 El. Afterwards by many subsequent statutes (several of which were occasional only, and adapted to the particular juncture and circumstances of the time in which they were made, but which are referred to and inforced by the subsequent statutes on the same subject) divers other forgeries were made selony without benefit of clergy for the first offence; and others had other punishments assigned them: Such are these that follow:

It shall be felony without benefit of clergy, to forge or

counterfeit.

(1) Any bank bills, or notes, or the feal of the governor and company of the bank of England. 7 & 8 W. c. 31. f. 36. 8 & 9 W. c. 20. f. 36. 11 G. c. 9. f. 6. 12 G. c. 32. f. 9.

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And in general, any bank note, bill of exchange, dia vidend warrant, or any bond or obligation under the feal of the bank, or indorfement thereon; or knowingly offering to dispose thereof. 15 G. 2. c. 13. f. 12.

12 G. c. 32. f. 9. (2) India bonds.

(3) Bonds, receipts, warrants, or feal of the fouth-fea company: 9 An. c. 21. f. 57. 6 G. c. 4. f. 56. 6 G. c. 11. f. 50. 12 G. c. 32. f. 9.

(4) Exchequer bills: by the several acts which direct

the issuing the same.

(5) Any power to transfer stocks. 8 G. c. 22: f. 1. 9 G. c. 12. f. 4: or personating the owners thereof. G. 3. c. 25:

(6) Lottery tickets and orders: by the feveral lottery

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(7) Policy of affurance: 9 G. c. 18. f. 13.

(8) Mediterranean paffes. 4 G. 2. c. 18.

(9) Army debentures: 3 G. t. 14. f. 10.

(10) Marriage licence or registry of a marriage.

G. 2. t. 33.

(11) Stamps on vellum, parchment, and paper, by the

feveral stamp acts.

(12) Stamps on linen imported. 10 An. c. 19. f. 97: And felling it knowingly with a counterfeit stamp; 100 l. and the pillory. id.

And by the 9 & 10 W. c. 41. Forgers of feamens wills, or letters of attorney, Mall over and above the penalties by former laws, forfeit 200 l. with costs; half to the king;

and half to him that will fue. f. 3.

5. And besides these particular laws, in the 2 G. 2. a general law was made (for five years, and was afterwards revived and made perpetual), by which it is enacted, that if any person shall falsly make, forge, or counterfeit, or cause or procure the same to be done, or willingly aid or affift in the falle making, forging, or counterfeiting any deed; will, bond, writing obligatory, bill of exchange, promissory note, indorsement or assignment of any bill of exchange or promissory note, acquittance or receipt for money or goods, with intent to defraud any person; or shall utter or publish the same as true, knowing the same to be forged; --- he shall be guilty of felony without benefit of clergy; but not to work corruption of blood, or diffierison of beirs. 2 G. 2. c. 25. f. 1, 5.

6. And by the 7 G. 2. c. 22. it is further enacted, by way of addition to the foregoing, that if any person shall falfly make, alter, forge, or counterfeit, or willingly act or

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affift in the false making, altering, forging, or counterseiting any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money or delivery of goods, with intent to destraud any person; or shall utter or publish the same as true, with intent to desirand any person, knowing the same to be false;—he shall be guilty of selony without benefit of clergy; and this without any saving of the corruption of blood, or disherison of heirs.

Warrant or order for payment of money or delivery of goods In the case of Mary Mitchell, on this order,

"I defire you to let this woman have fix yards of ordinary stuff, one pair of stockings, one shift, one apron,
one handkerchief, and I will see it all paid for. Wit-

" nefs my hand, George May ?" monthsomb mawoll of and to

Upon a conference among the judges, nine of them were of opinion, that this writing is not a warrant or order for the delivery of goods within the meaning of the act: That the words warrant or order do import, that the person giving such warrant or order hath or at least claimeth an interest in the money or goods which are the fubject matter of that warrant or order; that he hath or at least assumeth a disposing power over such money or goods; and taketh on him to transfer the property, or custody of them at least, to the person in whose favour fuch warrant or order is made: And tho' the prefent case, and many others of the like kind, may come within the mischiefs intended to be prevented by the act, yet in the construction of acts so penal as this, the old rule of adhering strictly to the letter must not be departed from. And the prisoner was discharged from the indictment which was brought against her for forging of this order.

7. Forgery is excepted out of the act of general par-

don; 20 G. 2.

Fruit and Fruit-trees. See Cloob.

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DY the 43 El. c. 14. All faggots to be fold shall contain B in compass, besides the knot of the bond, 24 inches of affize; and every faggot stick within the bond, shall contain full three foot of affize, except only one stick to be but one foot long, to stop or harden the binding.

By the 9 An. c. 15. All billets (except those made of beech, 10 An. c. 6.) that lie exposed in publick places where they are usually bought or fold, shall be affized, and cut or marked in manner following; That is to

All billets of what scantling or denomination soever, shall contain in length three foot and four inches, and be of the following dimensions; viz.

| Names of the billets. | Round | Half round | Quarter | Le show out to the |
|-----------------------|--|---|-----------|---------------------|
| A and the | in. gr. | in. qr. | in. gr. | in Horaci na dis |
| A fingle | 7 2 | 0 0 | 0 0 | No notch. |
| A caft | 10 2 | 12 1 | 12 0 | One notch. |
| A trois | 13 0 | 15 0 | 14 3 | Three in the middle |
| 2 caft | 15 0 | 17 1 | 17 0 | Two notches. |
| may al 1910 | | | 1000 | (One at each end |
| 3 can | 18 1 | 21 1 | 21 0 | and one in the |
| w then the | rigido. | 801 - 71 | Fall Pale | (middle. |
| 4 caft | 21 1 | 24 2 | 24 0 | 4 notches. |
| -Us is caft | | 27 2 | 27 0 | 5 notches. |
| 6 caft | | 30 0 | 29 2 | 6 notches. |
| 7 caft | 28 0 | 32 2 | 132 0 | 7 notches. |
| 8 caft | | 34 3 | 34 0 | 8 notches. |
| 9 caft | | 36 3 | 36 1 | 9 notches. |
| 10 caft | | S Danie Park St. Park St. | 38 0 | 10 notches. |
| 11 caft | Control of the Contro | - | _ | 11 notches. |
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| 16 caft | | 8.2 | 50044 | 16 notches. |
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| 18 caft | | - | - | 18 notches. |
| 19 caft | 46 1 | - | - | 19 notches. |
| 20 call | 47 2 | - | | 20 notches. |

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And if they shall not be thus assized and marked, then on information to a justice of the peace, mayor, or other head officer, he shall call before him six good and lawful men of the town, and shall swear them truly to inquire and present, whether the same be of good and sufficient affize; and if they shall present that any of them is not sufficient, the same so being desicient shall be forfeited, and be delivered to the overseers, to be by them distributed to the poor. id. s. 2.

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And by the 43 El. c. 14. The billets shall be measured within six inches of the midst; and the surplusage which shall happen between any two next measures, being above the one, and under the other, shall be taken for the be-

nefit of the buyer.

Fuller's earth. See Moollen manufadure. Furze, Burning it in forests. See Burning.

Bame.

THE statutes relating to this title are very numerous, and the sense sometimes a little perplexed, so that perhaps upon a view of the whole, it may seem, that about sour or sive new acts, comprehending the several heads here undermentioned, and repealing all the preceding ones, would conduce to render this branch of our

laws more intelligible and ufeful.

After having first premised (in order to avoid frequent repetitions throughout this whole title) that it is enacted by the statute of the 8 G. c. 19. that where any person for any offence against any law in being at the making of the said act, for the better preservation of the game, shall be liable to pay any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may sue for the same (before the end of the second term after the offence committed, 26 G. 2. c. 2.) by action of debt, or on the case, bill, plaint, or information, in any court of record at Westminster, wherein if he recovers he shall have double costs. And by the 2 G. 3. c. 19. whereas a moiety of the said penalty by several acts is directed to be applied to the use of the poor of the parish where the

offence was committed, by reason whereof inhabitants of the said parish have been disallowed to give evidence; it is enacted, that it shall be lawful for any person to sue for the whole of such penalty to his own use, and if he recovers he shall have double costs; such action to be brought within six months after the offence committed: (This being premised) I will treat of this subject under the sollowing heads:

I. Origin of the distinct property in game.

II. Certain observations concerning forests, chases, parks, and warrens.

III. Concerning gamekeepers.

IV. Qualification by estate or degree to kill game; with the punishment of persons unqualified.

V. Laws for preferving the four footed game

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VI. Laws for preferving the winged game in particular.

VII. Laws for preferving the game of fish in particular.

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Under which three tast heads are comprehended those restrictions which seem to concern all persons whatsoever, whether qualified or not: for altho' a man be qualified to kill game, yet he must kill it in a lawful manner, and not in such ways as tend utterly to destroy it.

I. Origin of the distinct property in game.

Before we take notice of the statutes made for the prefervation of the game, it may be requisite to observe how the common law stood herein; which depends upon the difference made between tame and wild animals.

The tame animals, fuch as horses, cows, sheep, and the sike, are such creatures, as by reason of their sluggishness and unaptness for motion, do not sly the dominion of mankind, but generally keep within the same passures and limits, and may be easily pursued and overtaken, if by accident they should escape; and therefore O 3

the owner hath the same kind of property in them, as he hath in all other inanimate chattels, and for the violation

thereof may bring an action of trespass.

The wild animals, such as deer, hares, foxes, and such like, are those, which by reason of their swiftness or serceness fly the dominion of man; and in these, no person can have a property, unless they be tamed or reclaimed by him. And as property is the power that a man hath over any other thing for his own use, and the ability that he hath to apply it to the sufferntation of his being; when that power ceaseth, his property is lost; and by consequence an animal of this kind, which after any seizure escapes into the wild common of nature, and asserts its own liberty by its swiftness, is no more mine than any creature in the Indies, because I have it no longer in my power or disposal.

Hence it appears, that by the common law, every man had an equal right to fuch creatures as were not naturally under the power of man; and that the mere caption or

seizure created a property in them.

By immediate taking and killing them, they belong to fuch person in the same manner as any other chattels, and cannot be taken from him; since the first seizure and caption was sufficient to vest the property of them in him.

Also by taking and taming them, they belong to the owner, as do the other tame animals, so long as they continue in this condition, that is, as long as they can be considered to have the mind of returning to their masters; for while they appear to be in this state, they are plainly the owner's, and ought not to be violated; but when they forsake the houses and habitations of men, and betake themselves to the woods, they are then the property

of any man.

Another way of gaining property in them is, by inclofure; and then the beafts must be understood to be mine, as the profits of the soil it self are; and they can no more be taken and carried off, than any other profits of the land: and therefore if deer be inclosed in a park or paddock, or conies in a field or warren, they become so much a man's own, that no one ought to kill or take them away. And since in this case it is the inclosure that retains them (for take away the inclosure, and they are in their natural liberty); therefore the party is said to have right as he hath to any other profits there inclosed, and a distinct and independent right in every animal.

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It is a maxim of the common law, that such goods of which no one can claim any property do belong to the king by his prerogative; and hence all those animals ferm natura, which come under the denomination of game, are styled in our laws his majesty's game: and that which he hath, he may grant to another; and consequently another may prescribe to have the same, within such a precinct or lordship. And from hence cometh the right of lords of manors, or others, unto the game within their respective liberties.

And upon this foundation the several acts of parliament are established, for the preservation of these species of animals; for the recreation and amusement of persons of fortune, unto whom the king with the advice and assert of parliament hath granted the same; and to prevent persons of inserior rank, from squandring that time, which their station of life requireth to be more profitably employed. For these restrictions do not take from the common people any right which they ever had; but only grant unto some persons those privileges which before rested solely in the king. 2 Bac. Abr. 612, 613.

II. Certain observations concerning forests, chases, parks, and warrens.

i. A forest is a certain territory of woody grounds, and Forest, what fruitful pattures, privileged for wild beasts and sowls of forest, chase, and warren, to rest and abide there in the safe protection of the king, for his delight and pleasure: which territory of ground so privileged is meered and bounded with unremovable marks, meers, and boundaries, either known by matter of record, or by prescription; and also replenished with wild beasts of venary or chase, and with great coverts of vert for the succour of the said beasts there to abide: for the preservation and continuance of which, there are particular officers, laws, and privileges belonging to the same, requisite for that purpose, and proper only to a forest, and to no other place.

Manno. 143.

Note; That vert comprehends every thing which bears green leaves in the forest. Manw. 146.

2. Beafts of forest are properly hart, hind, buck, hare, Beasts of forest, boar and wolf; but legally all wild beasts of venary 1 Inst. 233.

Purlieu, what!

3. Purlieu comes from the French, pur, clear, entire, and exempt; and lieu, a place: that is a place, entire, clear, or exempt from the forest: and signifies those grounds which Henry the second, Richard the first, or king John added to their ancient forests, over other mens grounds; and were disafforested by the statute of charta de foresta.

4 Inft. 303. Manw. 242.

But nevertheless the purlieu as to some purposes is forest still, and is disafforested as to the particular owners of the land and for their benefit, and not generally to give liberty to any man to hunt the wild beafts, and fpoil the vert. And if those beafts do escape out of the forest into the purlieu, the king hath a property in them still against any man, but against the owners of the woods and lands in which they are; and such owners have a special property in them ratione loci, but yet so that they hunt them fairly, and not forestall them in their return towards the

forest. Manw, 292.

But a purlieu man may not hunt in every man's lands within the purlieu, but in his own lands only; and therefore if he find the beafts of the forest in his woods or lands in the purlieu, in such case he hath a property in them against any other man ratione foli (the king only excepted.) And if he begins the hunting in his own lands, then by reason of that property he may pursue his hunting thro' any man's woods or lands, so as he doth not enter into ony forest, chase, park, or warren. And if he kill the beaft in another man's land, and out of fuch privileged place, he may take and carry away the same by reason of the first property. But if the beast recover the forest, he must call back his dogs, for they are then the king's wild beafts again. And if he do not call back and rebuke his dogs, and they kill the beaft in the forest, he is a trespasfer, the himself never came within the bounds thereof. But if in hunting towards the forest, the dogs fasten on it before it is within the bounds thereof, and the does ftill hanging on are drawn by the deer into the forest, and it is killed there, then by reason of the first property which he had ratione foli, and also by the pursuit and possession thereof before it entred the forest, he may lawfully enter and take it. Manw. 1945-7.

4. A chase (from chasser, to chase is a privileged place for receipt of deer and beafts of the forest, and is of a middle nature betwixt a forest and a park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts; and yet is of a larger compass

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tion ther, warr of a only if his denie 1409 than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It different from a park in that it is not inclosed; for if it is inclosed, it is a good cause of forfeiture; tho it must have certain metes and bounds, but it may be in other mens grounds as well in one's own. Read. Game. Manw. 49.

5. Beafts of chase are the buck, doe, fox, martern, Beafts of chase,

and roe. Manw. 50.

6. A park (from the French, parquer, to inclose) is a Park, what, large parcel of ground privileged for wild beasts of chase by the king's grant, or by prescription. Read. Game.

7. The beafts of park properly extend to the buck, Beafts of park.

doe, fox; but in a common and legal fense to all the

beafts of the forest, Read, Game.

8. A park must be inclosed; for if it lies open, it is a Park to be ingood cause of seizure into the king's hands, as a thing closed. forseited; and the owner cannot have an action against those that hunt in his park, if it lies open. Read. Game.

9. Deer in a park shall go to the heir, and not to the Deer shall go to

executor. I Inft. 8.

10. A warren is a place privileged by prescription or Warren, what, grant of the king, for the preservation of the beasts and sowl of the warren; viz. hares, conies, partridges, and pheasants. Read. Game.

11. A free warren may lie open, there being no neces- Need not to be

fity of inclosing it, Read. Game.

12. Conies in a warren (as hath been faid before of Conies shall go deer in the park) shall go to the heir, and not to the executo the heir. cutor. 1 Inft. 8.

or-warren, without a licence under the great feal of the king; because the common law gives no way to matters

of pleasure, for that they bring no profit to the commonwealth. 2 Inft. 199.

But in the case of K. and Sir William Lowther, M. 12 G. There was a motion for leave to file an information in nature of a quo warranto, against Sir William Lowther, to shew by what authority he had made and set up a warren. But it was denied by the court; because it was of a private nature, and therefore proper to be prosecuted only in the name of the attorney general by information, if his majesty thought sit. And the like motion had been denied before in the case of the Lord Lisburn. L. Raym. 1409. Str. 637,

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Which of these is the highest franchise.

14. A forest is the highest franchise of princely pleafure; the next to that is a free chase; a chase in one degree is the same as a park, only a park is inclosed, and a chase is always open; the next in degree to a free chase, is a park; and next unto a park, is the franchise of a free warren. Manw. 148.

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Common in a chase.

15. A person may have common in a chase, as well as in a forest; but a forest is governed by the forest law, and a chase and park by the common law. 4 Inst. 314.

Trespais, in what case,

Manw. 49.

16. If I find a pheasant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reason of the first property which I had in the pheasant ratione soli; and if my hawk kill the pheasant in another man's land, I may enter and take it, by reason of that property and pursuit; and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entring the ground. But if the pheasant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren. And the law is the same, in the cases of all wild beasts of the forest and chase. Manw. 193, 196.

No trespass in following beasts of prey.

17. Notwithstanding the common law allows of the hunting of foxes and badgers, being beasts of prey, in another man's ground, because the destroying of them is looked upon as a publick benefit; yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case.

Game escaped out of the inclofure, may be retaken on fresh suit,

of trespass in that case. Cro. Fac. 321.

18. If conies are hunted out of the warren, or deer out of the park, and the warrener or parker pursue them, he may retake them; for the park or warren is an establishment by the publick, to look after and preserve the game; for all things unoccupied, in which no man hath a civil right, are under the regulation of the publick; now in parks and warrens, officers are established by authority, to have an eye over the game, and to keep it within the boundaries; so that the property is not altered by driving it out of the inclosures, unless it be also out of the pursuit of the officers; for as long as he that is thus trusted doth pursue it, it is not in its natural liberty, but is still belonging to the park or warren. 2 Bac. Abr. 613.

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काति प्रविक्तालया विकासियामध्ये III. Concerning gamekeepers.

1. All lords of manors, or other royalties, not under Who may apthe degree of an esquire, may by writing under their hands point a game-keeper. and feals (A) authorize one or more gamekeeper or gamekeepers, within their respective manors or royalties. ' 22 & 23 C. 2. c. 25. f. 2.

2. And may impower him thereby, upon their own ma- With power to nors, to kill hare, pheafant, partridge, or any other game : kill game.

But if the gamekeeper shall, under colour thereof, kill or take the same for the use of the lord, and afterwards fell and dispose thereof without the lord's consent; and be convicted, on complaint of fuch lord, and on oath of one witness, before one justice; he shall be committed to the house of correction for three months, to be kept to hard labour. 5 An. c. 14. f. 4.

3. But no lord of a manor shall make above one person One gamekeeper to be gamekeeper within any one manor, with power to in one manor; kill game. And the name of fuch person shall be entred with the clerk with the clerk of the peace where the manor lies; the en- of the peace. try to be made and viewed without fee; and a certificate thereof shall be granted by the clerk of the peace, on payment of one shilling:

And if any other gamekeeper, whose name is not so entred, who shall not be otherwise qualified by the laws of this kingdom, to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor, heath game, or grouse; he shall on conviction before one justice, on oath of one witness, forfeit for every offence 51. half to the informer, and half to the poor, by diffress: for want of diffress, to be fent to the house of correction for three months for the first offence, and for every other offence four months. 9 An. c. 25. f. 1.

Who shall not be otherwise qualified] From these words it feemeth clear, that a gamekeeper who is qualified in his own right to kill game, need not to be entred with the

clerk of the peace.

4. And moreover, by the 3 G. c. 11. it is further enact- To be also a ed, that no lord of a monor shall make any person to be servant of the a gamekeeper with power to kill game, unless such person ately employed be qualified by the laws of this realm fo to do; or unless for him. fuch person be truly and properly a servant to the said lord; or be immediately employed and appointed to take and kill the game for the fole use of the said lord, and not otherwife:

And if any person, not being qualified by the laws so to do, or not being truly and properly a fervant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the fole use or immediate benefit of the faid lord, shall under colour or pretence of any power or authority, deputation or qualification to him granted by any lord of a manor, take and kill any hare, pheasant, partridge, or other game whatsoever; or shall keep or use any greybounds, setting dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and deftroy the game; he shall forfeit 51, in like manner. f. r.

5. The gamekeeper (so authorised) may search for dogs Gamekeeper's 5. The gamekeeper (10 authorites) the fame for the use of the lord,

or destroy them. 22 & 23 C. 2. c. 25. f. 2.

But it hath been adjudged, that an authority from the lord of the manor is not of itself sufficient for this purpose, but that he ought to have a warrant from a justice of the peace. Comb. 183. Carpenter and Adams. At least it may be fafe to have fuch warrant, especially if any houses are to be entred and fearched.

For it would give too great a power to the gamekeepers, to leave it in their difcretion to fearch what places they shall think proper, as also to constitute them the judges whether fuch or fuch a person is or is not qualified to kill game. Therefore it is best to have a warrant from a juffice of the peace, after information and oath of the offence first made.

IV. Qualification by estate or degree to kill game; with the punishment of persons unqualified.

The qualification by effate for killing game, in the reign of K. Richard the fecond, was 40s. a year; in the reign James the first it was advanced to 10 l. a year, and after that in fome instances to 40 l. a year; and at last in the reign of K. Charles the second it was raised to roo l. a year. Not that the laws have become gradually more fevere; but as the value of money decreased, the qualification was raised in proportion, the estate continuing nearly the same; for an estate of 40s, a year in the reign of K. Richard the fecond was not much inferior to an estate of 100 l. a year in the reign of K. Charles the second. And the penalty for destroying the game was even more severe

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then than it is now; as I shall shew. For as those ancient laws relating to the game are still in sorce, and are generally enacted so to be by the subsequent statutes, it will be necessary in order to have a thorough knowledge of this matter to insert them in their order; because the penalties on each being different, the prosecutor or justices may chuse which of them they will convict an offender upon. Thus by the statute of the 5 An. hereafter sollowing, if a person not having 100 l. a year shall keep dogs or engines to destroy the game, he shall forseit 5 l. but if such person have not 40 s. a year, he may upon the statute of R. 2. be punished by a year's imprisonment; and so of the rest: provided that no person be prosecuted upon more than one act for one offence.

1. The first qualification relating to the game, was in 40. a year, the 13th year of the reign of R. 2. by which it is enacted, that no layman which hath not lands or tenements of 40s. a year, nor clergyman if he be not advanced to 10l. a year, shall have or keep any greyhound, hound, nor other dog to hunt; nor shall use fyrets, hays, nets, harepipes, nor cords, nor other engines for to take or destroy deer, hares, nor conies, nor other gentlemens game: on pain of a year's imprisonment. And the justices of the peace (that is, in their sessions) shall inquire of the offenders in this behalf, and punish them by the pain afore-

faid. 13 R. 2. A. 1. c. 13.

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2. The next qualification by estate or degree to kill 101. a year, game, was by a statute in the 1 J. whereby it is enacted, that every person who shall keep any greyhound for coursing of deer or hare, or setting dog or net to take pheatants or partridges (except he be seised, in his own right or the right of his wise, of 101. a year estate of inheritance, or 301. a year of a lives estate, or goods to the value of 2001. or be the son of a knight or lord, or the son and heir apparent of an esquire) and be thereof convicted, by consession, or oath of two witnesses, before two justices, he shall be committed to gaol three months, unless upon conviction he pay 20 s. to the churchwardens for the use of the poor, or after one month after his commitment he become bound by recognizance with two sureties before two justices, in 201. a piece, not to offend again in like manner.

1 J. 6-27. J. 3.

3. The next qualification relates to deer and conies 40! a year, only, in the 3 7. c. 13. by which it is enacted, that if any person not having hereditaments of 40!. a year, or not worth in goods 200! shall use any gun or bow to kill

any deer or conies; or shall keep any buckstall, nets, or coney dogs (except he have grounds inclosed, and used for the keeping of deer or conies, the increasing of which faid conies shall amount to the value of 40s. a year; or keepers or warreners in their parks, warrens, or grounds); in fuch case any person having lands or hereditaments of 100 l. a year in fee, or for life, in his own right or the right of his wife, may take from fuch person to his own use for ever such guns, bows, buckstalls, nets, and coney dogs. 3 7. c. 13. f. 5.

4. The next qualification relates to pheafants and par-

tridges only, and is as follows: Every free warrener, lord of a manor, or freeholder feifed in his own or his wife's right, of 401. a year of inheritance, or lives estate of 801. or worth in goods 400 l. may take pheasants and partridges (in the day time only) in his own free warren, ma-

nor, or freehold, betwixt Michaelmas and Christmas yearly.

7 7. 6. 11. 1. 7.

5. The last general qualification by estate or degree to kill game, and which is now most to be regarded, is in 22 & 23 C. 2. c. 25. by which it is enacted, that every person, not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of 1001. per annum, or for term of life, or baving lease or leases of 99 years, or for any longer term, of the clear yearly value of 150 l. (other than the fon and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies for their necessary use, in respect of the faid forests, parks, chases or warrens) is hereby declared to be a person by the laws of this realm, not allowed to have or keep for himself or any other person, any guns, bows, greyhounds, fetting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, barepipes, gins, fnares, or other engines for the taking and killing of game. 1. 3.

Other than the fon and heir apparent of an esquire Esquire, escuyer, scutarius, called by the Saxons schilt knaben or knapen (from whence cometh the word knave, which anciently fignified a fervant), is a name of dignity, next above the common title of gentleman, and below a knight. Heretofore he fignified one that was attendant, and had his imployment as a fervant, waiting on fuch as had the order of knighthood, bearing their shields, and helping them to horse, or such like. And this title is of that na ture with us now, that to whomfoever either by blood, or place in the state, or other eminency, we conceive

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fome higher attribute should be given than that sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually style him an esquire, in such passages as require legally that his degree or state be mentioned. Seld. Tit. of Hon. 374, 462, 687.

6. And the gamekeeper, or any other person (authorised by Searching for warrant (B) of a justice of the peace) may in the day time dogs and enginee. fearch the houses, outhouses, or other places of any such person prohibited by this act to keep or use the same, as upon good ground shall be suspected to have or keep in his custody any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, or other dogs to destroy bares or conies, hays, tramels, or other nets, lawbels, harepipes, snares, or other engines aforesaid, and the same to seize, and keep, for the use of the lord of the manor, or otherwise to cut in pieces or destroy. 22 & 23 C.

2. c. 25. f. 2.

7. And if any unqualified person shall have, keep, or 20 s penalty for use any bows, greyhounds, setting dogs, ferrets, coney keeping dogs and dogs, hays, lurchers, nets, tunnels, lowbels, harepipes, fnares, or any other instruments for destruction of fish, fowl, or other game; and shall not give a good account before a justice, to the fatisfaction of such justice how he came by the same, or else shall not in some convenient time (to be fet by such justice) produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof; he shall forfeit for every offence not under 5. nor above 20 s. half to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction, not more than one month, nor less than ten days, there to be whipt and kept to hard labour. And if any person so produced or charged with the faid offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered. 4 & 5 W. c. 23. J. 3.

And all lords of manors and their gamekeepers may within their manors oppose and resist such offender, in the night time, in the fame manner as if the fact had been committed in any ancient chase, park, or warren inclosed.

And no certiorari shall be allowed to remove any conviction, unless the party first become bound to the profecutor in 501. with such sufficient sureties as the justice shall think fit, to pay within a month after the conviction confirmed,

Siv

confirmed, or precedendo granted, full costs and charges; and in default thereof, the justice shall proceed to the execution of the conviction. f. 7.

I. penalty for keeping dogs and engines; and the farne to be feised.

8. But by a subsequent statute 5 An. c. 14. If any person, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engines to kill and destroy the game, and shall be thereof convicted (C D E) on the oath of one credible witness, before one justice, be shall forfeit 51. half to the informer, and balf to the poor of the parish where the offence was committed, to be levied by distress (F); for want of distress, to be sent to the house of correction (G) for three months for the first offence, and for every other offence four months.

And any justice, and lord within his manor, may take away fuch dogs, nets, or other engines, which shall be in the power

or custody of any person not qualified. 1. 4.

Not qualified by the laws of this realm. In the case of K.
and Chandler, T. 12 W. Holt Ch. J. in delivering the opinion of the court, upon a conviction for deer-stealing, faid, that in these convictions by justices of the peace in a fummary way, where the ancient course of proceeding by indictment and trial by jury is dispensed with, the court may more easily dispense with forms; and it is sufficient for the justices, in the description of the offence, to pursue the words of the statute, and they are not confined to the legal forms requisite in indictments for offences by the common law. L. Raym. 581.

And in the case of Q. and Matthews, T. 10 An. On a conviction upon this statute, exception was taken, that the conviction reciting the defendant not to be a person fo and fo qualified, and enumerating diffinctly the feveral qualifications in 22 & 23 C. 2. omitted a new qualification allowed by this act, namely, that he was not a person authorised by a lord (or lady) of a manor to kill game for his use. And by the court; Had it been generally laid thus, that he not being a person qualified according to law, and fo on, it had been enough; but the qualifications being diffinctly and feverally mentioned, the omission of one is fatal. 10 Mod. 26. [But the cale was adjourned.]

And in the case of K. and Marriot, M. 4 G. There was a conviction for keeping a greyhound; reciting that one William Toune came and informed, that the defendant being a person not qualified to keep a greyhound, did nevertheless keep one at such a place, and therewith killed feveral hares; and that he being fummoned did appear,

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and being asked what he had to say, offered nothing in excuse, and therefore the justice convicted him. It was objected, that the justice should set out, why the defendant is not a qualified person, as that he is not the son of an esquire, nor has 100 l. a year in his own or his wife's right: For he ought not to make himself the sole judge, but give the reasons at large. Parker Ch. J. seemed to think the conviction would be good, having followed the words of the statute, and that if the defendant was qualified, he ought to have shewn it before the justice, being summoned for that purpose. Eyre J. started an objection, that it was not the justice that had taken upon him to fay the defendant was not qualified; but only the witness: for the conviction runs, that the witness being fworn faith, that the defendant being a person no way qualified did fuch a day keep a greyhound; fo that it appears, the witness has given the law to the justice, and takes upon himself to judge of the defendant's qualifications, and the justice is only made use of as an instrument, to reduce the opinion of the witness into a conviction. By Parker C. J. the being not qualified should be the conclufion of the justice, and not the words of the witness; for he ought not to fwear generally a man is not qualified, and fuch a general proof will not be good: This is only an invention, to support a conviction in general terms, which would be bad if the particular facts were alledged. Pratt J. Where the justices have a summary jurisdiction, and no appeal lies (as in this case), we must keep them up strictly to the law; and I should be glad if we could make them fet out the whole particularly. The case was adjourned. And afterwards Pengelly ferjeant mentioned two cases, Q. and Hayward, E. 12 An. There it was, not being qualified, licented, or authorized to keep any engine, and it was quashed. The other was the fame term, and quashed, because no qualifications were mentioned. And towards the end of the term this conviction was quashed; and the principal reason declared to be, because the witnesses had taken upon themselves, to judge of the qualifications. Str. 66.

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And in the case of K. and Hill, H. 12 G. the desendant was convicted, for unlawfully keeping a lurcher and a gun to kill and destroy the game, not being qualified by the taws of this realm, so to do. And the conviction being removed into the king's bench by certiorari, was quashed; because it was only averred generally, that he was not qualified, and did not aver that the desendant had not the Vol. II.

particular qualifications mentioned in the statute, as to degree, estate, and the rest. L. Raym. 1415.

And in the case of Bluet and Needs, E. 9 G. 2. In an action qui tam on the statute, it was objected, that it is not sufficient to say he was not qualified, without shewing he had not 100 l. a year, nor other estate which makes a qualification. By the court, It is sufficient if the words of the statute be pursued; and the defendant may come in and shew his qualification. Indeed, convictions have been quashed for not setting forth what was the want of qualification, because it must be made out before the justice, that he had no such qualification as the law requires; and therefore the justice ought to return, that he had no manner of qualification, before he can convict the defendant. Comyns 522.

And in the case of K. and Bryan, M. 12 G. 2. which was a conviction on the gin act, exception was taken, that there was no averment, that it was not fold to be used in medicine: and the cases on the game act were mentioned, where in convictions it is necessary to exclude all the qualifications for killing game. On the other hand, it was infifted that the reason of that was, because those were in the enacting clause, whereas this about medicine comes in by way of proviso, and is by way of defence to be shewn on the defendant's part. And for that purpose was cited K. and Theed, M. 11 G. where in a conviction for obstructing an excise officer on the 8 An. c. q. it was objected, that it not being averred to be in the day, it should have been shewn that there was a constable present, which is made necessary in the night; but it was held to be well, and that its being in the night should have been shewn on the defendant's part. And by the court, This is brought within the general enacting clause: and the true distinction is, where the extenuation comes in by way of proviso, or exception. And the conviction was confirmed. Str. 1101.

Finally, in the case of K. and Maurice Jarvis, H. 30 G. 2. The conviction did set forth, that the defendant did unlawfully keep and use, and had in his custody and possession, one setting dog and setting net, for the destruction of the game; and that he the said Maurice Jarvis was not then any wise qualified, impowered, licensed, or authorized, by or according to the laws of this realm to kill game. It was moved to quash this conviction. And by lord Manssield Ch. J. It is now settled by the uniform course of authorities, that the qualifica-

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tions must be all negatively set out: Otherwise the justices have no jurisdiction over the persons killing game, or keeping dogs or engines for the destruction of it. The obiter faying in 10 Mod. (if it was a book of better authority than it is) would fignify nothing, when the determinations are the other way. There is a great difference between the purview of an act of parliament, and a proviso in an act of parliament. In the case of K. and Marriot; where the witness swears only generally, it was holden insufficient: And the justices who convict upon the evidence of the witness, can have no other or further ground to go upon, than what the witness swears. In the case of K. and Hill, it is the very point established and fettled, that the general averment is not fufficient, and that it must be averred that the defendant had not the particular qualifications mentioned in the statute. In the case of Bluet Qui tam, and Needs; the general averment of the defendant's not being qualified, was holden to be sufficient upon an action, though insufficient upon a conviction: The diffinction is obvious between an action and a conviction. In the present case, the witness swears generally, that the defendant was not qualified. The justices adjudge it generally, only. The stream can go no higher than the spring head. So the conclusion, which the justices draw from the testimony of the witness, must be as general as that testimony. In the case of K. and Pickles, M. 19 G. 2. it was laid down as a rule, that the want of the particular qualifications required by the 22 & 23 C. 2. c. 25. ought to be negatively fet out in convictions. And the only question there was, whether it was necessary to add the inferred or argumentative qualification, collected from the 5 An. c. 14. but not mentioned in the 22 & 23 C. 2. c. 25. of his not being lord of a manor. Exceptio probat regulam: Nor was the general rule at all doubted or disputed in that case. In indictments upon the 8 & 9 W. c. 26. for having a coining press, every thing which shews that the defendant had no authority, must be negatively set out: And so it was done, in the indistment of Bell, which was lately argued before all the judges. I take the point to be settled, by the constant tenor of all the authorities; and I think upon very good reason (if there was need to enter into the reason at large, after it has been fully settled already). - Mr. justice Denison concurred, and said, it was a clear case, and that it was fully settled and established, that in these convictions, the want of the particular qualifications mentioned in the 22 & 23 C. 2. ought to be negatively fet out. If not, the justices have no jurisdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he hath not the qualifications, which are specified in that act, nor any of them. Indeed you are not obliged to go further than the words of this act of parliament of the 22 & 23 C. 2. and that was the case of K. and Pickles. But however, in that case, the present point was established, and taken to be indisputable. - Mr. justice Foster also concurred, and said, that on negative acts of parliament, the point is fully fettled and established, that the particular qualifications mentioned in the purview of them, must be negatively specified in convictions made upon them.—And by the court unanimoufly, the conviction was quashed. Burrow. 148.

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Shall keep or use H. 8 G. K. and Filer. Conviction for keeping a lurcher to destroy game, not being qualified. Exception was taken, that it was not shewn he used the dog to deftroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, The statute is in the disjunctive, keep or use; so that the bare keeping a lurcher is an offence; and fo it was determined in the case of K. and King, E. 3 G. which was a conviction for keeping a gun; and it was not doubted by the court, whether the keeping was not enough to be shewn, but the only question they made was, whether a gun was fuch an engine as is within that statute; and in that case a difference was taken, as to the keeping a dog, which could only be to deftroy the game; and the keeping a yun, which a man might do for the defence of his house. And the conviction was confirmed. Str. 496.

Use In the case of K. and King aforesaid, Parker Ch. J. said, that walking about with intent to kill game, is evidence of using the instrument for that purpose. Self. C. V. 1. 88.

Any greyhounds, fetting dogs, hays, lurchers, tunnels, or any other engines] H. 13 G. 2. Hooker and Wilks. An action was brought on the 8 G. a. 19. for using a bound to destroy game. And after a verdict for the plaintiss, the judgment was arrested; for the statute of the 5 An. c. 14. has not the word bound, and the words other engines come after nets, and are applicable only to inanimate things. And this being a penal law, cannot be extended.

The statute of the 22 & 23 C. 2. c. 25. has indeed general words, or any other dogs to destroy game; but this is not a conviction on that statute. Str. 1126.

Nor indeed could it have been a conviction on that statute, for any penalty in certain for killing and destroying the game; for the statute of the 22 & 23 C. 2. doth not inflict a general penalty upon persons unqualified who shall kill and destroy the game; but only declares, who shall or shall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to feize the dogs, nets, and other engines of fuch unqualified perfons. if the defendant did kill the game, and had the same in his custody; he might have been prosecuted for the penalty of 20s. for such offence, by the statute of the 4 & 5 W. hereafter following .- But then the confequence of all this will be, that it is not penal barely to keep a bound on this statute of the 5 An. but if any unqualified person shall do so, the gamekeepers or others, authorized by a justice's warrant, may seize and keep or destroy the fame, by the aforefaid statute of the 22 & 23 C. 2.

So in the case of Reason and Lisse, T. 11 G. 2. On an action upon the statute, the plaintiff declared, that the defendant kept and used a dog to destroy the game. It was objected, that he ought to have expressed what sort of dog; for it might be a mastiff, or a lap dog, which might chance to kill game; and the statute only mentions greyhounds, setting dogs, and lurchers; and this being a penal law, shall not be extended by equity. And of this opinion was the court. And judgment was arrested. Comyns, 576.

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Any other engines] T. 11 G. 2. K. and Gardiner. It was moved to quash a conviction, for unlawfully having and keeping a gun, being an engine or instrument for destroying the game. And it was urged, that this is no sufficient charge within this act, or any other of the laws relating to the game: for it is not said, that the defendant used the gun for the destruction of game; and a gun is not an instrument so far appropriated to killing game, as that it is criminal for a person to have one in his custody only: And it would have been altogether as well, if it had been said, that the desendant had in his custody a cane for the destruction of the game, which may possibly be used for that purpose. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and

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which can only be used in, the destroying of game. A gun is an engine, not for killing the game, but for the defence of a man's house. And the whole court were clearly of opinion, that this conviction is not good. For (as they argued) if the statute is to be construed so largely, as to extend to the bare having of any instrument, that may possibly be used in destroying game, it will be attended with very great inconvenience; there being scarce any tho' ever so useful, but what may be applied to that purpose. And tho' a gun may be used in destroying game, and when it is so, doth then fall within the words of the act; yet as it is an inftrument proper, and frequently neceffary to be kept and used for other purposes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the destruction of game, that is prohibited by the act: but otherwise it is of lurchers, harepipes, and fuch like, which are peculiarly fitted or disposed for killing game. The bare keeping of these for the purpose of killing game, is sufficient to convict an offender, and it will be incumbent upon the defendant himself to prove, that he kept them for other purposes. And the conviction therefore was quashed. After which, Strange solicitor general said that in the case of K. and King, E. 3 G. Lord Macclesfield said, that he was in the house of commons when this act was made, and he himself objected to the inserting of the word gun therein, because it might be attended with great inconvenience. Andr. 255. Seff. C. V. 2. 204. Str. 1098.

And shall be thereof convicted] H. 6 G. K. and Johnson, Conviction for keeping a gun, not being qualified. Exception was taking, that here was not a reasonable summons; for it was made on the fifth of October, to appear the same day, which might be impossible upon account of distance, or the summons being served late, and his witnesses might not be got together on so short a warning; then it is to appear at the parish aforesaid, whereas there are two parishes mentioned before; so the man may have gone to one, whilst they were convicting him at the other. It was answered, that the defendant appeared at the time and made desence, so that cures all desects in the summons. And by the court, The answer is right, Str. 261.

H. 5 G. 2. K, and Heber. On a rule to shew cause, why an information should not be granted against the defendant

fendant Mr. Heber, a justice of the peace, for convicting two persons, Hargrave and Lancaster, for killing game not being qualified; the complaint in relation to Hargrave was, that the defendant fent his warrant for him, by which he was arrested, without any previous information upon oath; in relation to Lancaster, the complaint was, that he happening to be present at the time Hargrave was convicted, the defendant took that opportunity of convicting him also, without giving him any previous summons, by which he might prepare himself for his defence. The court (the chief justice being absent) were very clear, that an information ought to go against the defendant for his behaviour in relation to Lancaster; for they said, it was a most known rule of common justice, that no man ought to be convicted of an offence, till he has previous notice given him of the charge, that he may be prepared to put in his answer to it. Accordingly the rule, as to him, was made absolute. As to Hargrave, judge Probyn thought, that the rule, with respect to him also, ought to be made absolute. He said, a warrant deprives a man of his liberty; and therefore a fummons ought only to issue, and not a warrant, without an information upon oath. The other two judges did not think this a fufficient cause for granting an information. And therefore the rule, with respect to Hargrave, was discharged-In this case, the court would not proceed to make a rule to fhew cause, until the convictions were removed thither by certiorari: for, they faid, if there was no conviction, there ought to be no information; and if there was a conviction, this ought to appear by the record. 2 Barnardift. 34, 77, 101.

On the oath of one credible witness H. 9 G. K. and Gage. The defendant was convicted for using a greyhound in killing hares. Exception was taken to the conviction, that the statute hath only given the justices jurisdiction to convict upon the oath of one or more credible witnesses, whereas this was upon his own confession, which it was insisted the justices had no power to take. But by the court, The conviction must be confirmed. The intent of mentioning the oath of one witness, was only to direct the justices, that they should not convict on less evidence: suppose the confession had not been before the justices, but before two witnesses who had sworn it; that would be convicting him on the oaths of witnesses, and yet the evidence would not be so strong as this. Here the justices

had a better evidence, than the oath of any fingle witness; and it is a monstrous thing to say, that a better fort of evidence shall not do. Str. 546.

Credible witness M. 2 G. 2. K. and Stone. A conviction was quashed, because the informer was the witness; divers convictions having been quashed for the same reafon before. L. Raym. 1545. The same adjudged in the case of K. and Blaney, T. 11 G. 2. Andr. 240. And in the statute of the 2 G. 3. c. 19. it is recited, that in prosecutions on the act of 8 G. c. 19. in the courts at Westminsser, where a part of the penalty is given to the poor of the parish, the inhabitants of such parish had been disallowed to give evidence; and therefore in that case, to remedy the same, the act gives the whole penalty to the prosecutor, in order to enable the inhabitants to give evidence.

Before one justice] H. 12 G. K. and Buck. It was moved, to quash an indictment for killing a hare, this not being a matter indictable, the statute appointing a summary proceeding before justices of the peace; and a case was cited K. and James, T. 1 G. where an indictment for keeping an alehouse was quashed, because the statute of the 3 G. c. 3. had directed a particular remedy. And by the court, The indictment must be quashed. Str. 679.

Shall forfeit 51.] T. 10 An. Q. and Matthews. On a conviction, exception was taken, that the person was charged with so many 51. as he had killed hares in the same same day. And the court was of opinion, that the offence for which the statute gave the sorfeiture, was the keeping dogs and engines, and not killing the hares. If a man not qualified goes a hunting, and kills never so many hares on the same day, he would forseit but one 51. for it is but one offence; but if a man keeps dogs, and goes a hunting several days, and kills hares, if it was thus laid, that he such a day kept dogs and killed, and then again such a day, by laying thus severally, the offence is severed, and he shall forseit 51. for each offence.

So in the case of Marriot and Shaw, E. 4 G. where the defendant was convicted, that upon such a day he kept and used a greyhound to kill and destroy the game at such a place, that on the same day he kept and used a greyhound to kill and destroy the game at another place,

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and so at a third place, and killed several hares at the said several places; it was adjudged by the court, that this being all done on the same day, was only one offence; for this statute does not give 5 l. for every hare; but only says, if any unqualified person shall keep or use any greyhounds, or the like, to kill and destroy the game, he shall forseit 5 l. Comyns, 274.

To the poor of the parish where the offence was committed] In some places a man may stand in one parish (or county), and shoot into two or three: in such case, the place where the offence was committed is, where the party stood when he shot, and not where the object was which he shot at. Show. 339. M. 3 W. K. and Alsop.

By distress T. 9 G. K. and Burchet. The court ordered an attachment (unless cause shewn) against the town clerk of Guildford, and a defendant convicted on the game act, for granting and suing out a replevin of goods distrained for the penalty. But on shewing cause the next term, when Eyre J. only was present, he discharged the rule, because it was only a contempt to the inserior jurisdiction of the justices, and in that case the king's bench

never interposes. Str. 567.

But in the case of the king against the sheriff of Leicestershire and others, M. 2 G. 2. An attachment was moved for against the desendants, for replevying three horses, which were seized as sorseited upon a justice's warrant, they being driven in a waggon contrary to act of parliament. The court, tho' they would not grant an attachment, yet made a rule to shew cause why an information should not go. And on shewing cause, the court thought there was enough to excuse the sherist; but granted it against Parsons whose horses were seized, because he knew that the justice had granted this warrant; but it did not appear that the sherisf did. 1 Barnar-dist. 110.

And in the case of K. and Monkhouse, E. 16 G. 2. The court granted an attachment against the under-sheriff of Cumberland, for granting a replevin of goods distrained on

a conviction for deer-stealing. Str. 1184.

For want of distress, to be sent to the house of correction]
T. 12 G. Hill. and Bateman. Before Raymond Ch. J. at Westminster. The defendant Bateman, being a justice of the peace, had convicted the plaintist for destroying game, and though (as it was proved) the plaintist had effects of

his own, which might have been distrained, which were fusficient to answer the penalty he had incurred, yet the defendant sent him immediately to Bridewell, without endeavouring to levy the penalty uppon his goods: and an action of trespass and false imprisonment being brought against Bateman for this commitment, the chief justice was of opinion, that the action well lay, Str. 710.

And [no] certiorari shall be allowed to remove the conviction or other proceedings on this act, unless the party convicted shall before the allowance thereof become bound (H) to the prosecutor in 501. with such sureties as the justice shall think sit, to pay full costs and charges in 14 days after the conviction [consirmed], or proceedendo granted. And in default thereof, the justice shall proceed in execution of the conviction in such manner as if no certiorari had been awarded. 5 An.

c. 14. f. 2.

Note; The word [no] is inferted instead of the words [if any] which are in the act, since that word seemeth necessary to make up the sense; and the word [confirmed] is added for the like reason. And indeed there have been too many inadvertencies in the drawing up of this act; for there is salse grammar in no sewer than six places, besides other mistakes.

Search for game; with 20 s. penalty for having it.

9. And the conftable, authorized by a justice's warrant, shall enter into and fearch (in such manner and with such power as in case where goods are stolen, or suspected to be Stolen) the houses, outhouses, or other places belonging to such bouses of suspected persons not qualified: And if any hare, partridge, pheafant, pigeon, fish, fowl, or other game, shall (upon such search, or otherwise) be found, the offender shall be carried before a justice; and if such person do not give a good account how he came by the same, such as shall satisfy the faid justice, or else shall not in some convenient time, to be set by the justice, produce the party of whom he bought the same, or some other credible person to depose upon oath such fale thereof, he shall be convicted by the faid justice of such offence, and upon such conviction shall forfeit for every hare, partridge, pheasant, fish, fowl, or other game any sum not under 5s. and not exceeding 20s. half to the informer, and balf to the poor, by diffress; for want of distress, to be committed to the house of correction not more than one month, nor less than ten days, there to be whipt and kept to hard labour. 4 & 5 W. c. 23. f. 3.

Or other game] Rabbets killed in a private warren, are not game within this act. L. Raym. 151.

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For every hare, fish, fowl, or other game] These words are very penal.

And if any person so produced, or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered. id. f. 3.

And no certiorari shall be allowed to remove any conviction, unless the party first become bound to the prosecutor in 501. with such sufficient sureties as the justice shall think fit, to pay within a month after the conviction confirmed, or procedendo granted, full costs and charges; and in default thereof, the juflice to proceed to the execution of the conviction. id. f. 7.

10. If any higher, chapman, carrier, innkeeper, victualler, Carriers and or alebousekeeper, shall have in his custody or possession or shall came in their buy, fell, or offer to fell any hare, pheafant, partridge, moor, postession. heath game or grouse, unless such game in the hands of such carrier be fent up by some person qualified; (or, if any person whatsoever, whether qualified or not, shall sell, expose, or offer to sale any hare, pheasant, partridge, moor, heathgame, or grouse, 28 G. 2. c. 12.) he shall be carried before a justice where the offence is committed (I); and being convicted thereof (in three months after the offence) on view, or cath of one witness, he shall forfeit for every hare, pheasant, partridge, moor, heath-game, or grouse, the sum of 51. half to the informer, and half to the poor, by distress (K): for want of distress, to be committed (L) to the house of correction for the first offence three months, and for every other offence four months. 5 An. c. 14. f. 2.

And no certiorari shall be allowed to remove the conviction or other proceedings, unless the party convicted shall before the allowance thereof, become bound to the prosecutor in 50 l. with such sureties as the justice shall think fit, to pay full costs in 14 days after the conviction confirmed, or procedendo granted. And in default thereof the justice shall proceed in execution of the conviction, in such manner as if no certiorari had been

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And if any hare, pheasant, partridge, moor, heath-game, or grouse, shall be found in the shop, house, or possession of any poulterer, salesman, fishmonger, cook, or pastry cook, or of any person not qualified in his own right to kill game, or intitled thereunto under some persons so qualified, it shall be deemed an exposing thereof to fale. 9 An. c. 25. f. 2. 28 G, 2, c. 12.

Found

Found in the shop] This must be understood of proof

that it was found. 2. and George, 6 Mod. 57.

And any justice of the peace, and lord within his manor, may take away any such hare, pheasant, partridge, moor, heath-game, or grouse, or any other game, from any such higher, chapman, innkeeper, victualler, or carrier, or any other person not qualified, which shall be found in his custody or possession.

5 An. c. 14. s. 4.

And any person that shall destroy, sell, or buy any hare, pheasant, moor, heath-game, or grouse, and shall in three months make discovery of any higler, chapman, carrier, innkeeper, ale-bousekeeper, or vistualler, that hath bought or sold, or offered to buy or sell, or had in their possession any hare, pheasant, partridge, moor, heath-game, or grouse, so as any one shall be convisted; such discoverer shall be discharged of the pains and penalties hereby enasted for killing or selling such game, and shall receive the same benefit as any other informer.

An. c. 14. f. 3.

Inferior tradefmen killing game. 11. And whereas great mischiefs do ensue by inferior tradesmen, apprentices and other dissolute persons, neglecting their trades and employments, who follow hunting, fishing and other game, to the ruin of themselves, and damage of their neighbours, therefore if any such person shall presume to hunt, hawk, fish, or sowl (unless in company with the master of such apprentice duly qualified; he shall not only be subject to the other penalties, but if he be prosecuted for trespass, in coming on any person's land, and be sound guilty, the plaintist shall not only recover damages against him, but sull costs. 4 & 5 W. c. 23. s. 10.

For no man can come upon another man's ground to kill game, without being liable to an action of trespass.

2 Bac. Abr. 613.

But if he is qualified to kill game, and the damage found shall be under 40 s. he shall in such case pay no more costs than damages. id.

But an unqualified person so trespassing, shall pay full

costs by this statute.

Soldiers.

12. By the yearly mutiny acts, if any officer or foldier shall, without leave of the lord of the manor under his hand and seal, destroy any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof, on oath of one witness, before one justice; every officer so offending shall forfeit 51. to the poor, and the commanding officer upon the place, for every offence committed by any soldier under

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his command, shall forfeit 20 s. in like manner. And if, upon conviction by the justices, and demand thereof made by the constable or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission.

13. Here next followeth the statute of the 33 H. 8. The statute of c. 6. concerning guns: by which it is enacted as follows; 33 H. 8. con-

(1) No person, except he in his own right, or in the right of his wife, or some other to his use, have lands, tenements, fees, annuities, or offices, to the yearly value of 100 l. shall shoot in any cross bow, hand-gun, hagbut, or demihake, otherwise than as hereafter is expressed; on pain of 101, to be levied and disposed of in any of the three ways hereafter mentioned.

(2) And no person, of what estate or degree soever, shall shoot in, carry, keep, use, or have in his house or elsewhere, any hand-gun, not being in the stock and gun of the length of one yard; or any hagbut or demihake, not being in the stock and gun of the length of three

quarters of a yard; on the like pain of to l.

(3) And every person having 100 l. a year as above, may feize every fuch cross bow; and every fuch handgun, hagbut, and demihake being fo deficient in length; and he may keep the cross bow to his own use; but he shall in 20 days after seizure break and destroy the handguns, hagbuts, and demihakes, on pain of 40s. in like manner, for every gun so seized, and not broken and destroyed'; and the same so broken and destroyed he may keep to his own use.

(4) And no person not being qualified as above, shall carry or have in his journey, going or riding in the king's highways or elsewhere, any cross bow bent, or gust charged, or furnished with powder, fire, or touch for the same, except in time and service of war; on pain of 101.

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(5) And no person shall shoot with any hand-gun, demihake, or hagbut, at any thing at large, within any city, borough, or market town, nor within a quarter of a mile of the same, except it be at a butt or bank of earth in place convenient, or for defence of his person or house; on pain of 10 l. in like manner.

(6) And no person shall command his servant to shoot in any cross bow, hand-gun, hagbut, or demihake, at any deer, fowl, or other thing, except only at a butt or bank of earth, or in time of war; on pain of 101. in like

manner.

(7) But

(7) But all gentlemen, yeomen, and servingmen of lords, knights, esquires, and gentlemen; and all inhabitants of cities, boroughs, and market towns, may shoot with any hand-gun, demihake, or hagbut of the length as above, but not under, at any butt or bank of earth, in place convenient.

And every fuch lord, knight, efquire, gentleman, and inhabitant of cities, boroughs, and market towns, may have and keep in their houses any such hand-gun, hagbut, or demihake, of the length aforesaid, to the intent only to use or shoot in the same at a butt or bank of earth.

And every person inhabiting in a house two furlongs from any city, borough, or town, may keep and have in his house, for the only desence of the same, hand-guns, hagbuts, and demihakes, of the length abovementioned; and may use and exercise to shoot in the same at any butt or bank of earth near to his house, and not otherwise.

And except makers and fellers of the fame, having them for that purpose only, and being of the length above.

Also this act shall not extend to persons inhabiting within five miles of the sea; so that they shoot not at any deer, heron, shovelard, pheasant, partridge, wild swine, or wild elk.

Also this act shall not extend to servants carrying the same by their masters command, so that they shoot not at any game.

Nor to any owner of a ship for having or keeping them, of what length soever, to be used in the ship only.

(Nor to persons licensed by the sessions to shoot in hand-guns or birding-pieces, at crow, chough, pye, rook, ring-dove, jey, or smaller birds, for hawks-meat only; so as they shoot no game, and so that they shoot not within 600 paces of a hernery, nor within a hundred paces of a pigeon house, nor in another man's park, forest, or chase. I J. c. 27. s. 7.

And except the sheriff, who may carry a gun in the

execution of his office. 5 Co. 72.)

(8) And if any person see or find any one offending or doing contrary to this act, he may arrest, and bring or convey him to the next justice of the county where he is found offending; who shall upon due examination and proof thereof made before him, by his discretion have full power to commit (M) the offender to the next gaol, there to

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cealm 20 s. action the k remain till fuch time as the faid penalty or forfeiture shall be truly contented and paid by the said offender; half to the king, and half to the first bringer or conveyor of the said offender to the justice.

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Which due examination and proof aforesaid, is intended not to be by a jury, but by witnesses. I Vent. 33.

Mr. Dalton says, forasmuch as in this case the justice hath the whole matter committed to himself, and the offenders remain convict upon his examination and proof of witness made before him; therefore he ought to be circumspect in his examination, as also in his mittimus; and farther to make a record (M) of the matter, in writing under his hand, and also to send the estreat of it into the exchequer, whereby the king's duty may be levied. Dalt. c. 47.

In the conviction, it is not fufficient to fay generally that he had not 100 l. a year, but the time must be certainly alledged, namely, that the defendant on the day and year aforesaid (when the offence was committed) had not 100 l. a year. 3 Mod. 280.

And upon such conviction, it hath been adjudged, that a writ of error doth not lie. 1 Ventr. 33.

(9) Also the justices in sessions may inquire of, hear and determine the said offences, so that no less fine than 10l. be assessed upon presentment and conviction, to be levied in such case to the king's use only.

And this may also be upon indistment. Dalt. c. 47.

And if the jury shall wilfully conceal any the said offences, the court may charge another jury to inquire of such concealment; and if it be so sound, the first jury shall forfeit to the king every one 20s.

(10) Also the leet may inquire of, hear and determine the same; in which case, half the forseiture shall upon presentment and conviction be levied to the king's use; and one moiety of the other half to the owner of the leet, by distress or action of debt; and the other moiety to him that will sue in any of the king's courts.

And if the jury shall wilfully conceal an offence, the steward may charge another jury to inquire of the concealment; and if it be found, the first jury shall forseit 20 s. each; half to the owner of the leet, by distress or action of debt; and half to him that shall sue in any of the king's courts.

year, if it is by the king; and within half a year, if by any other person.

V. Laws

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+ This statute of the 33 H. S. c. 6. is undoubtedly in force, and consequently may be put in execution; nevertheless it seemeth now to be obsolete, the object thereof being a matter not in any use, and the effect of it with respect to the game being superseded as it were by the several subsequent statutes. The original intention was folely for the incouragement of the use of the long bow. And the progress of the matter was as follows: - By the statute of the 19 H. 7. c. 4. it was thus enacted; The king our sovereign lord, confidering right well, that in the time of his most noble progenitors, shooting in long bows hath been much used in this his realm, whereby honour and victory hath been gotten against outward enemies, and the realm greatly defended, and much the more dread among all christian princes by reason of the same; which shooting is now greatly decayed in this realm, forasmuch as now of late the king's subjects greatly delight themselves in using of cross-bows, whereby great destruction of the king's deer, in forests, chases, and parks, daily is had and done, and shooting in long bows little or nothing used, and likely in short space to be loft and urterly decayed, to the great hurt and infeebling of this realm, and to the comfort of our outward enemies, if remedy be not therefore in due time purveyed; wherefore our faid lord the king, willing that his subjects in this realm shall use their long bows after the laudable custom used in time of his most noble progenitors, to the great honour, strength, and defence of this his realm, by the advice of the lords spiritual and temporal and commons in this present parliament assembled, hath ordained and enacted, That no person, without the king's special licence under his placarde, figned and fealed with his privy feal or fignet, shall occupy or shoot in any cross-bow (unless he shoot out of an house for the lawful defence of the same), except he be a lord, or have lands of freehold of 200 marks a year; on pain to forfeit the same, with the apparel thereto belonging, to him who shall seize and take the same —By the 3 H 8. c. 13. the qualification was raifed to 300 marks a year .- Afterwards, when guns came in use, it was enacted by the 6 H. 8. c. 13. as follows: Where the king's subjects daily delight themselves in shooting in cross-bows, whereby shooting in long bows is the less used, and divers good statutes for reformation of the same have been made, and that notwithstanding many persons not regarding the penalties of the said statutes, use daily to shoot in cross-bows and hand-guns, whereby the king's deer, and of other lords of this his realm are destroyed, and shall be daily destroyed more and more, unless remedy therefore be provided; it is enacted, that no person shall shoot in any crojs bow V. Laws for preserving the four footed game in particular.

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VOL. II.

Which faid laws, as hath been faid, do feem to concern all persons whatsoever, whether qualified or not.

Now the four footed game, or the game of beafts, are of three kinds, viz.

1. Deer

cross-bow or band-gun, on pain of forfeiting the same and also 10 l. unless he have by the year to the value of 300 marks, with power to the king to license persons as before. - And the like was enacted by two other statutes in that king's reign (14 & 15 H, 8. s. 7. and 25 H. 8. c. 17.) with some small variations, not material, repealing the former flatutes and the licences granted thereupon, and giving the king power to grant new ones; so that they feem to have been intended chiefly for the fake of bringing money into the exchequer by the renewal of licences .- And last of all cometh this statute of the 33 H. 8. c. 6. reciting, Where in the parliament holden in the 25th year of the king's most gracious reign, one statute was made for the avoiding and eschewing of shooting in cross-bows and hand-guns; since the making whereof, divers evil disposed persons, not only presuming the violation of the faid statute, but also of their malicious and evil disposed purposes have committed divers detestable and shameful murders, robberies, felonies, riots, and routs, with crofs-bows, little fhort band-guns, and little baquebuts, to the great peril and fear of the king's subjects; and also divers keepers of forests, chases, and parks, and divers gentlemen, yeomen, and ferving men, now of late have laid apart the good and laudable exercise of the long bow, which always heretofore hath been the furety, fafeguard, and continual defence of this realm of England, and an ineftimable dread and terror to the enemies of the same; and now of late the faid evil disposed persons have used, and do daily use, to ride and go in the king's highways, and elsewhere, having with them cross bows, and little band-guns, ready furnished with quarrels, gunpowder, fire, and touch, to the great peril and fear of the king's subjects; for reformation thereof, it is enacted (as is above

Subsequent to this, an act was made, 2 & 3 Ed. 6. c. 14. which is curious enough, to shew the progress of fire arms applied to the destruction of the game; the substance of which is this: Whereas an act made in the 33d year of H. 8. for some liberty to shoot in hand-guns, haques, and haquebuts, by which act nevertheless it was provided, that no person should shoot in any of the abovesaid pieces, but at a bank of earth, and not to any deer or

I. Deer. II. Hares. III. Conies.

I. Of deer.

There have been many laws from time to time enacted against deer stealers; which being not so much altered, as inforced by the subsequent statutes, except only in increafing the penalties, it may be proper to infert them all in their order; and the rather, because an offender, as it feemeth, may still be convicted upon any one of them; and it is generally provided, that fuch conviction upon one statute, shall be as a bar to all the rest.

Three years imprisonment and

1. The first statute is in the 3 Ed. 1. c. 20. which enacts, that if trespassers in parks be thereof attainted at the

fowl, unless the party might dispend 100 l. a year, forasmuch as the faid act having been devised, as it was then thought, for necessary exercise, tending to the desence of the realm, is grown fince to the maintenance of much idleness, and to such a liberty, as not only dwelling houses, dove coats, and churches, be daily damaged by the abuse thereof, by men of light conversation, but also there is grown a customable manner of shooting of bailsbot, whereby an infinite fort of fowl is killed, and much game thereby destroyed, whereby also the meaning of said statute is defrauded, for that the said use of bailshot utterly destroyeth the certainty of shooting, which in wars is much requisite; it is therefore enacted, that no person, under the degree of a lord of parliament, shall shoot in any hand gun within any city or town at any fowl or other mark, upon any church, house, or dove coat, nor shall any perfon shoot in any place any builshot, or any more pellets than one at one time; on pain of 10 l. and imprisonment for 3 months.

This act continued in force until the 6 & 7 W. c. 13. which enacts, Whereas by an act made in the 2 & 3 Ed. 6. it was ordained, that no person under the degree of a lord of parliament should shoot in any place any hailshot, or any more pellets than one at one time, on pain of 101, and imprisonment for 3 months; which act, however useful in those days, hath not for many years last past been put in execution, but became useless and unnecessary; yet nevertheless several malicious persons have of late prosecuted feveral gentlemen, qualified to keep and use guns, upon the said act; for remedy thereof, be it enacted, that the faid act shall be

and is hereby repealed.

But the aforesaid act of the 33 H. S. c. 6. continues in sorce, altho' the object thereof doth not now exist.

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fuit of the party, great and large amends shall be awarded according to the trespass, and they shall have three years imprisonment, and after shall make fine at the king's pleafure (if they have whereof,) and then shall find good furety that after they shall not commit the like trespass: and if they have not whereof to make fine, after three years imprisonment, they shall find like surety; and if they cannot find like furety, they shall abjure the realm. And if none fue within the year and day, the king shall have the fuit.

Trespassers] This is, when a man either chaseth in a park, or indeavours to kill fome of the game thereof. 2 Inft. 199.

In parks] This act, because it is very penal, is to be understood, not of a nominal park erected without warrant, but of a lawful park only, whereunto three things are required, 1. A liberty, either by grant or prescription. 2. Inclosure, by pale, wall or hedge. And 3. Beasts savages of the park. 2 Inft. 199.

2. The next statute is that intitled De malefactoribus in They may be parcis, 21 Ed. 1. st. 2. which enacts, that if any forester, lawfully resisted. or parker, shall find any trespassers wandring within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do continue their malice, and disobeying the king's peace do flee, or defend themselves with force and arms, altho' fuch forester, parker, or their affistants, do kill fuch offenders, they shall not be troubled upon

the fame. 3. The next statute makes hunting by night, or in By night, or difdisguise, and concealing the same, felony; but within the guised, and con-

benefit of clergy; as follows:

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When information shall be made, of any unlawful hunting, in any forest or park, by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person to be suspected thereof, he may make a warrant to take and arrest the person, and to have him before the maker of the warrant, or any other of the faid counsel, or justices of the peace; who may by their discretion examine him of the said hunting, and of the faid doers in that behalf: And if the same person wilfully conceal the faid huntings, or any person with him defecfective therein, that then the same concealment be, against every fuch person so concealing, felony. But if he then confess the truth, and all that he shall be examined of

ealing the fame,

and knoweth in that behalf, then the said offences of hunting by him done, shall be but trespass fineable at the next general sessions. And if any rescous or disobeysance be made to any person having authority to execute the warrant, by any person the which so should be arrested, so that the execution of the warrant thereby be not had, then the said rescous and disobeysance shall be felony. And if any person shall be convict of any such huntings, with painted faces, vizors, or otherwise disguised, to the intent they should not be known, or of unlawful hunting in time of night, then the same person so convict, to have like punition as he should have if he were convict of selony. 1 H. 7. 117.

When information shall be made] This information must shew at least just cause of suspicion; and it must be taken in writing, because it is the ground of the warrant. 3

Inft. c. 21.

In any forest or park] This doth not extend to a chase, nor to any forest or park in use or reputation, which are

not fo in law. 3 Inft. c. 21.

Wilfully conceal Lord Coke, who is a lover of the common law, and is jealous of every violation of it, seemeth to be out of humour with this act, and calls it an illpenned law. He observes it is the first that was made for the making of any hunting felony, against that excellent and equal branch of charta de foresta, nullus de cestero vitam vel membra amittat pro venatione nostra; and that this, and other old statutes concerning the forest, are called the good old laws and customs, and commanded to be observed; and therefore this new act is too severe for wild beasts, whereof there can be no selony at the common law. And therefore the judges (he says) have made a savourable construction of it, as is set forth in the following notable report:

M. 19 & 20 El. In the king's bench. Gerrard the queen's attorney general (who was a grave and reverend man) faid openly, that it had been refolved by the judges upon this flatute, that if a man in the night, or by day with painted face, do hunt as above, and being examined according to the act doth conceal it, yet this is upon the conftruction of the whole act no felony. For the first clause concerning the concealment, and the last clause concerning the fact itself, must be coupled or joined by conftruction together; that is to say, If any person be convict of such hunting with painted face, or of unlawful hunting in the night, this conviction must be upon not

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guilty pleaded; which the judges expounded to be the concealment intended in the first branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counsel or a justice of the peace, which may lie in averment, so as before it be felony he must be convicted of such hunting upon not guilty pleaded first, and after such conviction, then he must be indicted again upon the whole matter, that he feloniously did conceal it, against the form of the statute; and if the offender upon the first indictment confesses this act intendeth, and no felony within this statute.

This he fays, he heard the attorney report, and did then observe it; which concurring with his opinion, he thought good to publish, and the rather because in Lambard's justice, amongst his precedents of indictments, there is an erroneous precedent (he says) of an indictment of felony for the concealment upon the examination before a justice of the peace. And upon the whole he thinks it the clearest way to make it trespass, and not felony; which the party may do at his pleasure. 3 Inst.

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4. The next statute is in the 19th year of the same Penalty of keep-king, by which it is enacted, That no person, not having ing nets for deer. any park, chase or forest of his own, shall keep or cause to be kept any net, called deer-hays or buck-stalls, on pain of 101. a month; to him who shall sue by action of debt: or, the justices in sessions may call before them any persons suspected, and examine them; and if they be sound in default, may commit them till they have sound surety for payment of the forseiture to the king; and the justices shall have the tenth part of such forseiture for their labour. 19 H. 7. c. 11.

5. And by the same statute, no person shall stalk, nor Penalty of stalk-cause any other to stalk, with any bush, or beasts, to any ing to deer. deer, except in his own ground, chase, forest, or park,

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without licence of the owner, mafter, or keeper; on pain of 101. in like manner.

rol. or treble damages.

6. The next act is in 5 El. c. 21. which is re-enacted with some additions by the 3 J. c. 13. which is altered and explained by the 7 %. c. 13. the substance of all which put together is as follows;

If any person shall by night or by day, wrongfully or unlawfully break or enter into any park impaled, or any other feveral grounds inclosed with wall, pale, or hedge, and used and kept for the keeping, breeding, and cherishing of deer, and wrongfully or unlawfully shall hunt, drive, or chase out, or take, kill, or slay any deer therein; and be thereof convicted at the affizes or fessions, upon indictment, bill of complaint, information, or otherwife, at the fuit of the king or of the party, he shall for every offence pay 101, to the party grieved, or treble damages and costs, at the election of the party, to be affessed by the court; and shall find sufficient sureties for his good abearing for seven years, or continue in prison till he finds fuch fureties.

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But on fatisfaction of treble damages, the party may release the sureties within the seven years. Or if the perfon shall acknowledge his offence in open sessions, and that he is forry therefore, and fatisfy the party grieved, the court may discharge the recognizance.

But this shall not extend to any park or inclosed ground, hereafter to be made and used for deer, without the king's licence.

Guns, bows, and

7. And by the said statute of the 3 7. c. 13. it is also nets to kill deer, enacted, that if any person not having lands or hereditaments of 401. a year, or not worth in goods 2001. shall use any gun or bow to kill deer; or shall keep any buckstall or engine, unless he have grounds inclosed for keeping of deer; any person having 1001, a year may seize the same to his own use.

Selling deer.

8. Another statute is 1 7. c. 27, which enacts, that every person who shall fell, or buy to fell again, any deer, shall, on conviction at the affizes, or sessions, or before two justices out of sessions, forfeit for every deer 40 s.

half to him that will fue, and half to the poor.

9. The next act is in 13 C. 2. c. 10. by which it is enacted, that if any person shall unlawfully course, kill, hurt, or take away any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground where deer are or have been usually kept, without consent of the owner, or person chiefly intrusted with the custody

201.

thereof; or shall be aiding or assisting therein, and shall be convicted thereof by confession, or oath of one witness, before one justice, in six months after the offence committed; he shall forfeit for every offence 201. half to the informer, and half to the owner of the deer, by distress; for want of sufficient distress, to be committed to the house of correction for six months to hard labour, or to the common gaol for one year; and not to be discharged thence, till he hath given sureties for his good behaviour for a year next after his enlargement.

Note; This act doth not appear to be limited to grounds, inclosed only; altho' the statute of the 10 G. 2. c. 32.

hereafter following feems to suppose it so.

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10. The next act is the 3 \dot{W} . c. 10. on which most of 301. the convictions have been fince that time; which (together with the alterations and additions made in and to the same by the 5 G. c. 15. 9 G. c. 22. and 10 G. 2. c. 32. is as followeth:

If any person shall unlawfully course, hunt, take in toyls, kill, wound, or take away, any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground inclosed where deer are, have, or shall be usually kept, without the consent of the owner or person chiefly intrusted with the custody thereof; or shall be aiding or assisting therein; and shall be convicted (O) thereof, in 12 months after the offence, by confession, or oath of one credible witness, before one justice where the offence shall be committed, or the party apprehended: every fuch person so offending by unlawful coursing or hunting only, when no deer is taken, wounded, or killed, shall forfeit for every such offence 201. and in case any deer shall by such person or persons be wounded, taken in toyls or killed, such person or persons shall respectively forfeit for every such deer 301, to be levied by distress (P) upon the goods and chattels of the offender by warrant of such justice; one third to the informer, one third to the poor, and one third to the owner of the deer: for want of sufficient distress, such person shall be imprisoned (Q) for a year, and set in pillory an hour on some market day in the next adjoining town to the place where the offence was committed, by the chief officer of such market town, or his under officer, 1. 2.

Unlawfully] Where a man kills deer in pursuance of a supposed right which he has, he is not within the intent of this, nor of the other acts against deer stealing. L. Raym. 584.

Work to Poston

Dr. H

In any forest, chase, purlieu, paddock, wood, park, or other ground inclosed, where deer are, have, or or shall be usually kept M. 13 G. 2. K. against Calcutt and Monk. There was a conviction for deer stealing in a purlieu of the forest. Whereunto exception was taken, that it was not averred, that deer were usually kept in the purlieu, whereas by the flatute that feems to be required. To this it was answered, That such averment could not extend to a purlieu, for a purlieu is a place where by law deer cannot be kept, it being disafforested as well with regard to all others as the owner; and the oath of the ranger is, to drive deer out of the purlieu into the forest: Secondly, that the averment as to forests, chases, and purlieus, is not made neceffary by the act, for the words where deer are usually kept extend only to ground inclosed; else the words other ground will make it necessary to aver, that the forest was inclosed, which is not the case in any part of England. And by the court, The answer is right in both respects. Another objection was, that it did not appear, but that the defendant was owner of the purlieu; in which case he had a right to chase the deer off his ground. But by the court, That would be matter of defence, and should be shewn on his part, according to the refolution (beforementioned) in the case of K. and Bryan. So the conviction was confirmed, Str. 1119.

Or other ground inclosed, where deer are, or shall be usually kept] T. I Ann. Q. and Moore. A conviction for killing deer was quashed, because it said only that he killed deer in a certain place where deer had been usually kept, and did not say inclosed. L. Raym. 791.

Aiding or affifting therein] On a conviction, the question was, whether he who lent dogs to another to hunt, was aiding and affifting therein, to wit, in the hunting: And by the opinion of three judges he was; but Holt Ch. J. was of a contrary opinion, for this being a penal law, shall be construed strictly; and if so, then he who lent the dogs could not be affishing in the act of hunting, and so not within the words of the statute, aiding and affishing therein, tho' he might be affishing thereunto. 2 Salk. 542, 543.

And shall be convicted thereof.] There ought to be a summons in this, and in all other like cases, to warrant a conviction; and that ought to give a reasonable time to appear in: but if the desendant hath appeared, it cures the want of a summons. I Salk, 181, 383.

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H. 3 G. K. and Simpson. The defendant was convicted for deer stealing; and the conviction set forth, that he had been summoned to appear before the justices; but it did not appear he ever was before them. Exception was taken to this, that as no appeal lies in this case, the justices should not have proceeded in the absence of the party, especially where it may end in a corporal punishment, as it may do here, for want of a diffress. And at another day, on confideration, Parker Ch. J. delivered the resolution of the court: We are all of opinion, the offender may be convicted, without appearing. The statute is filent as to the method of proceeding, and the law of England, it is true, in point of natural justice, always requires the party charged with any offence to be heard before he be condemned in judgment; but that rule must have this exception, unless it is through his own default: were it otherwise, every criminal might avoid conviction. The law being fo, the magistrate is bound to give some opportunity to the party to appear; and if upon such notice, he neither comes, nor fends a fufficient excuse, the magistrate may proceed to judgment. If this was not to be allowed, the confequence would be, that the offender would escape unpunished, because he would never appear purposely to be convicted; and that would be to make the execution of the law depend on the will of the offender.

There was another order of conviction, whereby it appeared, that the defendant made an attorney to defend for him: And by the court; We think that it is certainly good; for the offender may entrust his defence with another, and the justices cannot enforce him to appear in person. And the orders were confirmed. Str.

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In 12 months after the offence] A conviction being returned on a certiorari, the objection was, that the conviction appeared to be a year after the day of the information; but it was held sufficient that the information be prosecuted within a year after the fact; for that is a good commencement of the suit, and it is from that the computation is made in all such cases. 1 Salk. 382.

But by the black act hereafter mentioned, this profecution may be commenced at any time within three years

after the offence. 9 G. c. 22. f. 13.

Oath of one credible witness. This must not be upon the single oath of the informer; and a conviction was quashed for that reason; divers convictions, as it is said, having

been quashed for the same reason before. L. Raym. 1545.

Str. 216.

In the case of K. against Wilford and Savage, M. 5 G. The defendants were severally convicted of deer stealing on this statute. Exception was taken that the persons on whose testimonies the desendants were convicted, appeared to be of the same parish where the facts were committed, and so might be intitled to part of the penalty. But it was over-ruled by the court; because the justice hath averred them to be credible witnesses, and it doth not appear that they were of the poor of the parish. Viner.

Deer stealing. A. 24.

So in the case of K. and Mitter, H. 7 G. 2. The offence was committed in the parish of Barking. The witness was an inhabitant of the same parish. It was objected, that part of the penalty being given to the poor of that parish, the witness was interested, and therefore incompetent. It was answered, that if indeed the penalty had been given to the overseers of the poor of the parish, the objection might have had some weight in it, for then it would have been for the benefit of the rich as well as of the poor; but here it is given merely by way of bounty to the poor, and the rest of the inhabitants can have no benefit by it. And the court was of opinion, that the objection was sully answered; and the conviction was confirmed. 2 Barnardist. 383.

Every fuch person so offending] A conviction of two persons was removed, wherein judgment was given, that each should forseit 301. It was objected, that there ought to be but one 301. forseited. But not allowed: For the words of the act are, that they shall respectively forseit 301. and this penalty is not in nature of a satisfaction to the party grieved, but a punishment on the offender; and crimes are several, the debts be joint. I Salk. 182, H. 10 An. 2. against King.

To be levied by distress | Sale of the goods is not mentioned here in the statute; yet nevertheless where the law gives a distress for a publick benefit, the officer may sell. I Salk. 379.

By warrant of fuch justice] Altho' the constable is not appointed to execute this warrant, nor is so much as named in the clause; yet he is bound to obey the warrant, and is indictable if he does not: but he need not return the warrant it self, for that is not required, and it

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may be necessary to keep it for his own justification: but he must either return that, or certify what he has done upon it. 1 Salk. 381.

One third to the informer, &c.] The penalty need not be distributed by the conviction; viz. 101. to the informer, 101. to the poor, and 101. to the party grieved; for the judgment in such cases seldom mentions a distribution: it is enough to say, that he is convicted, and hath forfeited 301. according to the statute. 1 Salk. 383.

For want of sufficient distress. If the justice finds there is nothing to distrain, then he must make a record thereof, and make an adjudication for corporal punishment; but the offender is not to pay part, and suffer corporally for

the residue. L. Raym. 546, 1195, 6.

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nd it may H. 6 G. K. and Whitlock. The defendant was committed for want of distress; and the warrant set forth, that it had been certified to the justice by the constable, that there was not sufficient distress. It was objected that there ought to have been a warrant to levy, and a return to that, that there was no distress; it may be, the constable only told him so. But by the court, The warrant is well enough; for the word certified imports it to be in a legal manner. Str. 263.

And then the act goes on thus:

Any owner of deer in any inclosed ground, or any perfon acting under him, may result such offenders in the same manner as if the fact had been committed in an an-

cient chase or park. 3 W. c. 10. f. 5.

And as to the case of venison's being found in a man's possession, it is further enacted, that the constable, by a justice's warrant, shall enter into and search (R) in such. manner and with fuch power as in case where goods are itolen or suspected to be stolen, the houses, outhouses, or other places belonging to fuch houses of suspected persons; and if any venison or skin of any deer, or toyls, shall there be found, he shall apprehend the offender, and carry him before a justice; and if such person do not give a good account how he came by the fame, such as shall satisfy the faid justice, or else shall not in some convenient time to be let by the faid justice, produce the party of whom he bought the same, or some other credible witness to depose upon oath such sale thereof, he shall be convicted by the faid justice of such offence, and thereupon shall be subject to the forfeitures and penalties hereby inflicted for the killing of one deer. 3 W. c. 10. f. 3.

And by the 9 G. c. 22. commonly called the Black act. any justice may issue his warrant for this purpose; and if any venison or skin of any deer, shall be found in the eustody of any person, and it shall appear that such person bought fuch venison or skin of any one who might be justly suspected to have unlawfully come by the same, and doth not produce the party of whom he bought it, or prove upon oath the name and place of abode of fuch party, then the person who bought the same shall be convicted of such offence by any justice of the peace, and shall be subject to the penalty above inflicted for killing one deer. c. 22. f. 11, 17.

After conviction, the constable or prosecutor may detain in custody the offender, if he shall not presently pay the money due on conviction, during fuch reasonable time as a return may be conveniently made to the warrant of distress, so as such detainer exceed not two days. 3 W.

t. 10. f. 4.

And moreover, the person convicted, before he shall be discharged out of custody, shall become bound to the perfon against whom the offence shall be committed, in 501, for his future good behaviour, and that he shall not offend in like manner; and upon refusal shall be committed to gaol until the bond be given: And if he shall be afterwards convicted of any offence in the faid ftatute of 3 W. c. 10. the bond shall be forfeited, and the penalty be rea covered with costs in any court at Westminster, over and above the forfeitures, and to be distributed as the forfeitures. 5 G. c. 15. f. 4.

All this being done, the justice shall certify a true copy of the conviction under his hand and feal, to the next quarter fessions, there to be kept among the records.

G. 2. c. 32. f. 8.

And no certiorari shall be allowed to remove any conviction, or other proceeding thereupon, unless the party, before the allowance thereof be bound to the profecutor in 501. with such sureties as the justice shall think fit, to pay in a month after the conviction confirmed, or a procedendo granted, full costs and damages, to be ascertained upon his oath; and at the same time become also bound to the juflice with sufficient sureties, in the penalty of 601. with condition to profecute the certiorari with effect, and to pay to the justice the forfeitures due by the conviction, or to render to the justice the person convicted within a month after the conviction shall be confirmed, or a procedendo granted: and in default thereof, the justice may proceed

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to the execution of the conviction. 3 W. c. 10. f. 6. 5 G. c. 15. f. 1.

Or, after delivering to the justice the rule by which the conviction shall be confirmed, he may proceed, as if a pro-

cedendo had been granted. 5 G. c. 15. f. 2.

H. 6 G. K. and Whitlock. The defendant being brought up from Newgate by habeas corpus, it appeared upon the return, that he was committed for deer stealing, as the statute of the 3 W. c. 10. directeth, not having sufficient diftress; and that this was done by one justice under the statute of the 5 G. And exception was taken to the warrant, that it doth not appear, the conviction was ever confirmed in this court, or that the rule for confirmation was delivered to the justice, and therefore the justice could not proceed to execution: for the flatute gives to the juflice a jurisdiction after confirmation, which he had not before; and therefore he ought to shew every thing requisite to found his jurisdiction upon. But by the court, We take notice of our own records, and by them it appears that the conviction is confirmed: and the statute doth not give the justice a new jurisdiction, but only revives his old one, which was fuspended by the certiorari. And the defendant was remanded. Str. 263.

Moreover, by the faid act of 5 G. c. 15. it is enacted, that if any keeper or other officer of any park, or place where deer are usually kept, shall be convicted on the said statute of the 3 W. for killing or taking away any red or fallow deer, or being aiding therein, without consent of the owner, or person chiesly intrusted with the custody thereof; he shall forseit 50 l. for each deer, to be distributed as the other forseitures; to be levied by distress: for want of distress, to be imprisoned for three years, and be set in the pillory two hours on some market day in the next town to the place where the offence was committed, by the chief officer of such market town, or his under

officer. f. s.

And it is further enacted, that if any person shall at any time pull down or destroy, or cause to be pulled down or destroyed, the pale or walls of any park, forest, chase, purlieu, paddock, wood, or other ground inclosed, where any red or fallow deer shall be then kept, without the consent of the owner, or person chiesly intrusted with the custody thereof; and shall be convicted thereof before one justice, by confession, or oath of one witness, he shall suffer the said forseitures of the 3 W. for killing one deer. 5 G.

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And any person sued for any thing done either on the 3 W. c. 10. or on this act, may plead the general issue; and if he recovers, shall have treble costs. 5 G. c. 15. f. 3.

Transportation for offences in places inclosed.

11. Next follows the statute of the 5 G. c. 28. by which it is enacted, that if any person shall enter into any park, paddock, or other inclosed ground where deer are usually kept, and wilfully wound or kill any red or fallow deer there, without consent of the owner of the ground, or of the person intrusted with the custody thereof, or shall be aiding or assisting therein; and shall be convicted thereof before the judge of assize, upon indictment, by verdict or consession,—he shall be transported for seven years:

But not to be profecuted likewise on any of the former

acts, all which nevertheless shall be of force.

Felony without benefit of clergy.

the Waltham Blacks made a further provision necessary, by that famous act of the 9 G. c. 22. from them usually called the Black Act, which hath created more new felonies than any other statute whatsoever: which with regard to the subject before us, doth enact as follows:

If any person or persons, being armed with swords, fire arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer; or if any person or persons (whether armed and difguifed or not) shall unlawfully and wilfully hunt, wound, kill, deftroy, or fteal any red or fallow deer, fed or kept in any places in any of the king's forests or chases, which are or shall be inclosed with pales, rails, or other fences; or in any park, paddock, or grounds inclosed, where deer have been or shall be usually kept; or shall forcibly rescue any person being lawfully in custody of any officer or other person, for any the said offences; or shall by gift or promise of money, or other reward, procure any to join him or them in any fuch unlawful act: every person so offending, being thereof lawfully convicted (in any county in England) shall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Concerning the manner of bringing the offender to jufice, and other particulars relating thereunto, it is proper

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to refer from hence to the title Black act; where these offences, together with the other offences in the faid act,

are treated of more at large.

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13. It is to be observed, that this act of the o G. c. 22. Transportation extends only to killing and wounding deer in places in- for a fecond ofclosed (except the offender be withal armed and disguised); uninclosed. and therefore the faid offence in places uninclosed remains as it was before the making the faid act: But by the statute of 10 G. 2. c. 32. a second offence against the former acts is made transportation: Which, after having recited, that whereas the abovefaid act of the 9 G. c. 22. extends not to hunting or taking deer in open forests or chases, but only in such as are inclosed, and offences in uninclosed places are only punishable by the 3 W. c. 10. which inflicts only a pecuniary punishment, which is not fufficient to deter offenders, --- doth therefore enact, That if any person who shall be convicted of unlawfully courfing, hunting, taking in toils, killing, wounding, or taking any red or fallow deer, in any open or uninclosed forest or chase, where deer are usually kept, shall be guilty of a fecond offence of the like nature, and shall be thereof lawfully convicted on indictment or information; he shall be transported for seven years; and if he returns within the time, he shall be guilty of felony without benefit of clergy. And the clerk of the peace shall at the request of the prosecutor, or of any person on his majesty's behalf, certify to the affizes a transcript under his hand and feal, briefly and in few words containing the effect and tenor of the first conviction (kept amongst the records); which certificate shall be sufficient proof of the first conviction. 10 G. 2. c. 32. s. 7, 8.

14. Moreover, by the faid act of the 10 G. 2. c. 32. Beating the If any person armed shall come into any forest, chase, or keeper, transporpark, wherein deer are usually kept, (whether inclosed or tation. not) with an intent to course, hunt, take in toyls, kill, wound, or take away any red or fallow deer, and shall there unlawfully beat or wound any keeper or page of any fuch forest, chase or park, their servants or assistants in the execution of their office, and be thereof lawfully convicted; he shall be transported for seven years. 10

G. 2. c. 32. J. 9.

15. Whereas the burning and destroying of goss, furze, Destroying coand fern in forests and chases, doth destroy the cover ne-vert for deer. cellary for the preservation of the deer and game there; therefore if any person not having a right or legal licence to do the same, shall set fire to, burn, or destroy (or be aiding

aiding therein) any goss, furze, or fern in any forest or chase, without consent of the owner or persons chiesly intrusted with the custody of such forest or chase, or of some part thereof, and being brought before a justice shall be thereof convicted by confession, or oath of one witness, or on view of the justice, he shall forfeit not exceeding 51. nor less than 40 s. half to the informer, and half to the poor; if not forthwith paid, to be levied by distress; and if no sufficient distress can be found, the justice shall commit him to the common gool, for any time not exceeding three months, nor less than one month. 28 G. 2. c. 19. s.

II. Of bares.

It is to be remembred, that I have already, under the third part of this title, treated of those particulars, which are common to this with other species of the game, as to destroying the same by unqualified persons; I here take notice of such things as belong to hares only, and which for the most part seem generally to concern all persons, whether qualified or not.

Tracing in the fnow.

1. No person of what estate, degree, or condition he be, shall trace, destroy, and kill any hare in the snow, with any dog, bitch, bow, nor otherwise. And the sessions or leet may inquire hereof; and after inquisition found, they shall for every hare so killed, cess upon every offender 6 s. 8 d. to be forseited to the king, if in the sessions; and to the lord of the leet, if in the leet. 14 & 15 H. 8. c. 10.

And by the 1 J. c. 27. Every person who shall trace or course any hares in the snow; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20 s. for every

hare; or after one month after his commitment become bound by recognizance with two fureties in 201. apiece, before two justices, not to offend again in like manner.

J. 2.

Snares and harepipes. 2. And by the said last mentioned act, every person who shall at any time take or destroy any hares, with harepipes, cords, or any such instruments or other engines; shall forseit for every hare 20 s. in like manner. 1 J. c. 27. s. 2.

And by the 22 & 23 C. 2. c. 25. f. 6. If any person shall be found or apprehended setting or using any snares,

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harepipes, or other like engines, and shall be thereof convicted, by confession, or oath of one witness, before one justice, in one month after the offence; he shall give to the party injured fuch damages, and in fuch time, as the justice shall appoint, and shall pay down presently to the overfeers for the use of the poor, such sum not exceeding 10 s. as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction not exceeding one month.

3. If any person whatsoever shall take or kill any hare Killing hares in in the night time; he shall on conviction before one jus- the night, tice, on oath of one witness, forfeit 5 l. half to the informer, and half to the poor, by distress; for want of diffress, to be sent to the house of correction for three months for the first offence, and for every other offence

four months. 9 An. c. 25. J. 3.

4. Every person who shall shoot at, kill, or destroy any Shooting hares. hare, with any gun or bow, shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens for the use of the poor 20 s. for every hare; or after one month after his commitment become bound by recognizance with two fureties before two juftices, in 201. apiece, not to offend again in like manner. The recognizance to be returned to the next fessions. 1 7. c. 27. J. 2.

5. Every person, who shall sell, or buy to sell again, Buying and selany hare, shall, on conviction at the affizes or fessions, or ling hares. before two justices out of sessions, forfeit for every hare 10s. half to the poor, and half to him that will fue. 1 7.

c. 27. J. 4.

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6. If any manner of persons shall hunt with spaniels in Hunting in corn, any ground where corn or other grain shall then grow (except in his own ground), at fuch time as any eared corn or grain shall be growing thereon, and before it be shocked or cocked, and be thereof convicted at the affizes, fessions, or leet; he shall forfeit 40 s. to the owner of the corn; and if not paid in ten days, he shall be imprisoned for one month. And any justice may examine the offender, and bind him over to appear at the next fessions to answer the offence, and to pay the penalty, or receive the punishment. 23 El. c. 10. s. 5.

7. By the Black act before mentioned, if any person, Taking hares in armed and difguifed, shall appear in any warren or place warrens, where hares are usually kept, or unlawfully rob any such warren; or (whether armed and difgui.ed or not) shall

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rescue any person in custody for either of the said offences, or procure any to join with him in any fuch unlawful act; he shall be guilty of felony without benefit of clergy.

III. Of conies.

Trespassers in warrens may be refifted.

1. If any warrener shall find any trespassers wandring within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to ftand unto the peace, but do flee, or defend themselves; altho' the warrener, or his affiftant, do kill fuch offenders, they shall not be troubled upon the same. 21 Ed. 1. ft. 2.

Hunting in a

2. When information shall be made of unlawful huntwarren by night ing in a warren by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person suspected, he may make a warrant to bring such person before himself or any other of the said counsel or justices; and if such person shall conceal the said hunting or any of his accomplices, it shall be felony; but if he confesseth, it shall be but trespass finable at the sessions.

Hunting by night in a warren inclosed.

1 H. 7. c. 7. 3. If any person shall in the night time enter into any grounds inclosed, and used for keeping of conies, and hunt, drive out, take, or kill any conies; he shall, on conviction at the fuit of the king or of the party, at the affizes or sessions, on indictment, bill, information, or otherwise, be imprisoned 3 months, and pay to the party grieved treble damages and cofts, and find fureties for his good abearing for seven years, or continue in prison till he does: But this shall not extend to any grounds to be inclosed and used for conies after the making of this act, without the king's licence. 3 J. c. 13.

Killing in places inclosed or uninclesed, by night or day.

4. If any person shall at any time enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of conies, whether it be inclosed or not; and there shall chase, take, or kill any conies; and shall be thereof convicted in one month after the offence, before one justice, by confession, or oath of one witness; he shall yield to the party grieved treble damages and costs, and be imprisoned 3 months, and after till he find sureties for his good abearing. 22 & 23 C. 2. c. 25. f. 4.

If by night, further penalty of transportation.

5. If any person shall wilfully and wrongfully, in the night time, enter into any warren or grounds lawfully used or kept for the breeding or keeping of conies, altho'

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the same be not inclosed, and shall then and there wilfully and wrongfully take or kill, in the night time, any coney, against the will of the owner or occupier thereof; or shall be aiding and affifting therein; and shall be convicted thereof at the affizes: he shall be transported for seven years, or fuffer fuch other leffer punishment by whipping, fine, or imprisonment, as the court shall award. Provided, that conies may be taken, in the day time, on the fea or river banks in the county of Lincoln, so far as the tide shall extend, or within one furlong of the faid banks; and the person taking them shall not be obliged to make fatisfaction for damage, unless the same shall exceed the fum of 1 s.

m of 1 s. 5 G. 3. c. 14. f. 6, 7, 8, 9.

6. By the Black act abovementioned, If any person, Felony without being armed and disguised, shall appear in any warren or benefit of clergy. place where conies are usually kept, or unlawfully rob any fuch warren; or (whether armed and difguifed or not) shall rescue any person in custody for such offence, or procure any person to join him therein; he shall be

guilty of felony without benefit of clergy.

7. No person shall kill or take in the night any conies Killing in the upon the borders of warrens, or other grounds lawfully night, in the used for the breeding or keeping of conies (except the rens. owner or possessfor of the ground, or persons imployed by them); on pain that the offender, on conviction in one month after the offence, before one justice, by confession, or oath of one witness, shall give to the party injured such damages and in fuch time as shall be appointed by the justice, and over and above pay down presently to the overfeers for the use of the poor such sum not exceeding 10 s. as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction for fuch time as he shall think fit, not exceeding one month. 22 & 23 C. 2. c. 25. J. 5.

The statute faith, upon the borders of warrens; but if they are out of the warren, no person hath any property in them, and a man may justify killing them if they eat up his corn; but no action lies against the owner of the

5 Co. 104. Read. Game.

So a person that hath a right of common may kill them, when they are out of the warren and destroy the common; but he cannot have an action on the case against the lord, for that would be to create a multiplicity of actions. Cre. El. 548. Cro. Ja. 195. Cro. Car. 388.

For a man cannot have an action for another man's conies breaking into his ground, because they are no

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longer the other's than while they are in the warren or place where he hath a right to keep them; so that no violation hereby arises to the property of one man by the beasts of another: but the conies, being in their natural liberty, may be lawfully killed by the owner of the soil.

2 Bac. Abr. 614.

But if the lord hath a right to put conies upon the common, and by an excels in the number furcharges the common, and by the number of burrows made by the conies prevents the commoner's cattle from depafturing the common; an action in fuch case is the proper remedy, and the tenant may not of his own accord fill up the burrows and remove the nusance. As in the case of Cooper v. Marshall, E. 30 G. 2. By lord Manssield Ch. J. The question in this case is not, whether the act of the lord be or be not hurtful, or how far it may be fo; but the question turns upon the remedy, whether it is abatable, whether the commoner can do himself justice. It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abatable. The lord, by his grant of common, gives every thing incident to the injoyment of it, as ingress, egress, and the like; and thereby authorizes the commoner to remove every obstruction to his cattle's grazing the grass which grows upon such a spot of ground: because every such ob-Aruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoner's cattle out, is inconfistent with a grant which gives them a right to come in. But the lord still remains owner of the foil; and is not debarred from exercifing any act of ownership. The commoner has no right to meddle with the foil. In the present case, the lord has done nothing moner from entring and putting in his cattle. The lord contrary to the grant. He hath not obstructed the comthemselves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord furcharges, the commoner is injured in his right of common, it is true: But what is the commoner's remedy? Not, to abate; not, to be his own judge, in a complicated question, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right fo far, but no further. Yet the commoner cannot destroy or drive off the conies; nor, confequently can he destroy the burrows, which is in effect destroying the conies. - By Mr. justice Denison: Upon the

the record of this case, it must be taken, that the plaintiff was owner of the foil, and had a free warren; and that there is not fufficient common left, by the increase of the conies, for the use of the commoner. The question then is, whether the commoner shall be intrusted to destroy the estate of the lord, in order to preserve his own right of common. This would be to conflitute himself judge in his own cause: No, let him take his proper remedy. A coney-burrow is not of its own nature a nufance: On the contrary, it is effential to a free warren. Therefore the nusance depends upon the number of them: And you can, at the utmost, only abate so much of the thing as is a nusance. You cannot destroy the whole (which is the right here claimed); but only fo much of the thing as makes it a nusance. By Mr justice Foster: This justification is clearly bad. It is founded on a claim of right which cannot be maintained. It is admitted, that a commoner cannot in this case destroy the conies, Consequently, he cannot destroy the burrows; for the effect is, destroying the conies. If the lord has exceeded the bounds of his right, the law is to determine the quantum of such excess; and to the law the commoner must refort for his remedy, if he is aggrieved. Burrow, 259.

8. If any person shall be found or apprehended setting or using any snares or other like engines, and shall be thereof in like manner convicted, he shall give to the party grieved fuch damages, and in fuch time as the juftice shall appoint, and pay down presently to the overseer for the use of the poor such sum not exceeding 10 s. as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction not exceeding one month. 22 & 23 C. 2. c. 25. f. 6.

q. If any person not having lands or hereditaments of Keeping engines. 40 l. a year, or not worth in goods 200 l. shall use any gun or bow to kill conies, or shall keep any ferrets or coney dogs (except he have grounds inclosed for keeping of conies, the increasing of which shall amount to 40 s. a year to be let, and except warreners in their warrens); in such case, any person having 1001. a year may seize the fame to his own use. 37. c. 13. f. 5.

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VI. Laws concerning the winged game in particular.

I. Of bawks and bawking.

II. Of Swans.

III Of partridges and pheasants.

IV. Of pigeons.

V. Of wild ducks, wild geefe, and other water fowl.

VI. Of beath fowl or moor game.

VII. Of berons.

VIII. Of other fowl.

I. Of bawks and bawking.

What hawks a man shall bear.

1. No man shall bear any hawk of the breed of England, called a nyesse, goshawk, tassel, laner, laneret, or faulcon, on pain of forfeiting his hawk to the king. And if he bring any of them over sea, or out of Scotland, he shall bring a certificate thereof from the officer of the port, or warden of the march; on the like pain of forfeiting the same to the king. And the person that bringeth any such hawk to the king, shall have a reasonable reward of the king, or else the hawk for his labour. 11 H. 7. c. 17.

Persons finding

2. Every person who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is lost, shall presently bring the same to the sheriff; and the sheriff shall make proclamation in all the good towns in the county, that he hath such an hawk in his custody; and if he is challenged in sour months, the owner shall have him again, paying the costs: if he is not challenged in four months, the sheriff shall have him, making gree to him that took him, if he be a simple man; but if he be a gentleman, and of estate to have the hawk, then the sheriff shall redeliver to him the hawk, taking of him reasonable costs for the time that he had him in his custody. 34 Ed. 3. c. 22.

Stealing a hawk.

3. And if any man steal any hawk, and the same carry away, not doing the ordinance aforesaid; it shall be done of him as of a thief, that stealeth a horse or other thing, 37 Ed. 3. c. 19. That is, he shall be guilty of selony, but shall have his clergy. 3 Inst. 98.

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4. If any person shall take away any hawks or their Taking hawks eggs, by any means unlawfully, out of the woods or the woods, ground of any person; and be thereof convicted at the affizes or sessions, on indictment, bill, or information, at the suit of the king or of the party; he shall be imprisoned three months, and shall pay treble damages; and after the three months expired, shall find sureties for his good abearing for seven years, or remain in prison till he

doth. 5 El. c. 21. f. 3.

But by a more ancient statute, no man shall take any ayre, faulcon, goshawk, tassel, laner, or laneret, in their warren, wood, or other place; nor purposely drive them out of their coverts accustomed to breed in, to cause them to go to other coverts to breed; nor slay them for any hurt done by them: on pain of 10 l. half to him that

will fue before the justices of the peace, and half to the king. 11 H. 7. c. 17.

And no manner of person, of what condition or degree he be, shall take or cause to be taken, on his own ground or any other man's, the eggs of any faulcon, goshawk, or laner, out of the nest; on pain (being convicted thereof before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. id.

5. If any manner of person shall hawk in another Hawking in man's corn after it is eared, and before it is shocked; and corn. be convicted at the assizes, sessions, or leet; he shall forfeit 40 s. to the owner: And if not paid in ten days, he

shall be imprisoned for a month. 23 El. c. 10.

II. Of Swans.

1. No person (other than the king's son) unless he Qualification to have lands of freehold to the value of five marks a year, keep swans. shall have any mark or game of swans; on pain of forfeiting the swans, half to the king, and half to any person (so qualified) who shall seize the same. 22 Ed. 4. c. 6.

2. It is felony to take any fwans that be lawfully mark-Stealing fwans

ed, tho' they be at large. Dalt. c. 156.

3. And as to swans unmarked; if they be domestical Swans unor tame, that is, kept in a moat, or in a pond near to a marked, dwelling house, to steal such is also selony. Dalt. c. 156.

So it feemeth of fwans unmarked, fo long as they keep within a man's manor, or within his private rivers; or if

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Swans eggs.

they happen to escape from thence, and be pursued and

taken, and brought in again. id. o

But if fwans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost; and so long, selony cannot be committed by taking them. id.

And yet such unmarked and wild swans the king's officers may seize (being abroad) for the king's use, by his prerogative. Also, the king may grant them, and by consequence another may prescribe to have them, within

a certain precinct or place. id.

4. Every person who shall take the eggs of any swans out of the nest, or wilfully spoil them in the nest; and shall be convicted thereof before two justices, by confession, or oath of two witnesses; shall be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20 s. for every egg; or after one month of his commitment, become bound by recognizance with two sureties in 201. a-piece, before two justices, never to offend again in like manner; which recognizance shall be returned to the next sessions. 1 J.

But by a more ancient statute, no person shall take or cause to be taken, on his own ground or any other man's, the eggs of any swan; on pain (on conviction before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the swans. 11 H. 7. 6. 17,

III. Of partridges and pheafants.

Partridges and pheasants are birds of warren, and the law seems peculiarly to protect them; as appears by what follows:

Taking them in another man's ground.

Taking them

their eggs.

with dogs, nets,

or engines; or

1. By the 11 H. 7. c. 17. it is enacted, that no perfon of what condition he be, shall take or cause to be taken, any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special licence of the owner or possessioner of the same; on pain of 10 l. half to him that shall sue, and past to the owner or possessioner of the ground where they shall be taken.

2. Every person who shall shoot at, kill, or destroy, any pheasant or partridge, with any gun or bow; or shall take, kill, or destroy them with setting dogs and nets, or with any manner of nets, snares, engines, or instruments

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whatfoever; or shall take their eggs out of the nest, or fpoil them in the nest; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay upon conviction to the churchwardens for the use of the poor, 20s. for every pheasant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two fureties, before two justices, in 201. each, not to offend again in like manner. The recognizance to be returned to the next fessions. 1 7. c. 27. s. 2.

And by the 7 %. c. 11. Every person, who shall take, kill, or destroy, any pheasant or partridge, with setting dogs and nets, or otherwife with any manner of nets, fnares, or engines, shall, on conviction before two justices, by confession, or oath of one witness, be committed to gaol for three months, unless he forthwith pay to the churchwardens, or overfeers 20 s. for every pheafant or partridge; and further to become bound by recognizance of 20 l. before one justice, that he shall not thereafter kill or destroy any pheasant or partridge. The recognizance to be filed at the next fessions.

3. Every person who shall fell, or buy to fell again, Sellingor buying. any partridge or pheasant (except they be reared and brought up in houses, or brought from beyond sea); shall on conviction at the affizes or fessions, or before two jus-

tices out of fessions, forfeit for every partridge 10 s. and

for every pheafant 20 s. half to him that will fue, and

half to the poor. 1 J. c. 27. f. 4.
4. If any person, of what estate, degree, or condition Taking in the foever, shall take, kill, or destroy any pheasants or par-night. tridges in the night time; and be thereof convicted at the assizes, sessions, or leet; he shall forfeit for every pheafant 20s, and for every partridge 10s, half to him that shall sue, and half to the lord of the manor, unless such lord shall license or procure the faid taking or killing, in which case the said half shall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he shall be imprisoned for one month: And moreover, besides such forfeiture and impriforment, he shall give bond to some justice of the peace, with good fureties, not to offend again in like manner for the space of two years. 23 El. c. 10.

And by the 9 An. c. 25. If any person whatsoever shall take or kill any pheafant or partridge in the night time; he shall, on conviction before one justice, on oath of one witness, forseit 5 l, half to the informer, and half to the

poor,

poor, by distress; for want of distress, to be fent to the house of correction for three months for the first offence, and for every other offence four months.

At what time hawking at them mall be prohibited.

5. Every person whatsoever, who shall hawk at, destroy, or kill, any pheasant or partridge, with any kind of hawk, or dog, by colour of hawking, between the first of July, and the last of August, shall, on conviction before two justices, by confession, or oath of two witnesses, in fix months after the offence, be committed to gaol for one month, unless he pay upon conviction to the churchwardens or overfeers for the use of the poor, 40 s. for every such hawking at any pheasant or partridge, and 20 s. for every fuch pheafant or partridge which he, his hawk, or dog, shall take or kill. 7 J. c. 11. f. 2.

shall be prohibited.

Within what 6. Finally, by the 2 G. 3. c. 19. No person shall, times taking them in any kind upon any protence whatsoever, take, kill, carry, sell, buy, or have in his possession or use, any partridge between Feb. 12. and Sep. 1. or any pheafant between Feb. 1. and Oct. 1. yearly; on pain of forfeiting, on conviction by one witness, in any of the courts of record at Westminster, 51. for every such fowl, with full costs. But this not to extend to any pheasant taken in the season allowed by this act, and kept in any mew or breeding place.

IV. Of pigeons.

Who may erect a dove-coat.

1. A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 Salk. 248. But any freeholder may build a dove-coat on his own ground. Cro. El. 548. Cro. Ja. 382.

Dove-cost not a nulance.

2. And it hath been adjudged, that erecting of a dovehouse is not a common nusance, nor presentable in the

Cro. 7ac. 490, 1.

Killing with dogs, nets, or engines.

3. By the 1 J. c. 27. S. 2. Every person who shall shoot at, kill, or deffroy any house-dove or pigeon with any gun or bow; or shall take, kill, or destroy the same with fetting dogs and nets, or with any manner of nets, fnares, engines, or instruments whatsoever; shall, on conviction before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens for the use of the poor of the parish where the offence was committed or the offender apprehended respectively, 20 s. for every pigeon, or after one month after his commitment, become bound

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by recognizance with two fureties, before two justices, in 20 l. a-piece, not to offend again in like manner. recognizance to be returned to the next fessions.

And by the 2 G. 3. c. 29. If any person shall shoot at with an intent to kill or by any means kill or take, with a wilful intent to destroy any house-dove or pigeon, and shall be thereof convicted, by confession or oath of one witness, before one justice where the offence was committed or the party apprehended, he shall forfeit 20s. to the profecutor; and if not forthwith paid, fuch justice may commit him to the gaol or house of correction, not exceeding 3 calendar months nor less than one, unless the forfeiture shall be sooner paid. But this not to extend to the owners of dove-coats, with regard to their own pi-And persons convicted on this act, shall not be convicted on any former act: and profecutions on this act shall be commenced and carried on with effect within two months after the offence committed: and persons imprifoned for default of payment of the penalty, shall not be liable afterwards to pay fuch penalty.

4. But if the pigeons come upon my land, and I kill Pigeons trefthem; the owner hath no remedy against me; tho' I may passing. be liable to the ftatutes which make it penal to deftroy them. Cro. Ja. 492.

5. Doves in a dove-house, young and old, shall go to Pigeons to go the heir, and not to the executor. I Inft. 8.

V. Of wild ducks, wild geefe, and other water fowl.

I. Every person who shall shoot at, kill, or destroy Shooting water with any gun or bow, any mallard, duck, teal, or wid-fowl. geon; and the same be proved by confession, or oath of two witnesses, before two justices; - shall be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20s. for each fowl, or after one month after commitment become bound by recognizance with two fureties, before two justices, in 201. each, not to offend again in like manner: Which recognizance shall be returned to the next sessions. 1 7. c. 27.

2. No person, between the last day of May, and Not to be taken the last day of August yearly, shall take, or cause to in the moulting be taken, any wild ducks, mallards, widgeons, teals, or wild geefe, with nets or other engines; on pain of a year's imprisonment, and to forfeit for every fowl so taken 4d. half to the king, and half to him that will

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fue by action of debt: Also the justices of the peace may enquire of, hear and determine the same, as in cases of trespass. 25 H. 8. 6. 11.

Nevertheless, any gentleman, or any other that may dispend 40 s. a year of freehold, may hunt and take such wild fowl with their spaniels only, without using a net or

other engine except the long bow. id.

But by a subsequent statute, if any person whatsoever (between June 1. and Oct. 1. yearly, 10 G. 2. c. 32.) shall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of refort for wild fowl in the moulting feafon; and shall be convicted thereof before one justice by the oath of one witness; he shall for every such fowl forfeit 5s. half to the informer, and half to the poor, by diffres; rendring the overplus above the penalty and charges of distress; for want of distress, to be committed to the house of correction not exceeding one month, nor less than 14 days, to be whipt and kept to hard labour. And the nets to be seized and destroyed in the presence of the justice. 9 An. c. 25. J. 4.

Deftroying their

3. No person from March 31. to June 30. yearly, shall take or destroy the eggs of any mallard, teal, or other water fowl; on pain of a year's imprifonment, and of forfeiting for every egg one penny, half to the king, and half to him that will fue by action of debt; or, the justices of the peace may determine the same as in cases of trespass. 25 H. 8. 6. 11.

VI. Of beath fowl or moor game.

Killing in the night.

1. If any person whatsoever shall take or kill any moor, heath-game, or grouse, in the night time; he shall, on conviction before one justice, on oath of one witness, forfeit 51. half to the informer, and half to the poor, by distress; for want of diffress, to be fent to the house of correction three months for the first offence, and for every

other offence four months. 9 An. c. 25. J. 3.

Shooting.

2. Every person who shall shoot at, kill, or destroy, with any gun or bow, any grouse, heath-cock, or moor game; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless upon conviction he pay to the churchwardens for the use of the poor, 20s. for each fowl, or, after one month after his commitment, become bound by recognizance with two fureties in 201. each, before

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before two justices, not to offend again in like manner: the recognizance to be returned to the next sessions. I 7,

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3. No person shall, upon any pretence whatsoever, Within what take, kill, carry, fell, buy, or have in his possession or times only to be use, any heath fowl commonly called black-game, between Jan. 1. and Aug. 20. or any grouse, commonly called red game, between Dec. 1. and July 25. yearly; on pain of forfeiting, on conviction by one witness in any of the courts of record at Westminster, 51. for every fuch fowl, to him who shall sue, with full costs. 2 G. 3. c. 19.

4. For the better preserving the red and black game of Burning ling. groufe commonly called heath-cocks, or heath polts, no

person whatsoever on any mountains, hills, heaths, moors, forest, chases, or other wastes, shall presume to burn between Feb. 2, and June 24. any grig, ling, heath, furze, gols, or fern; on pain of being committed to the house of correction, for any time not exceeding one month, nor less than ten days, there to be whipt and kept to hard la-

4 & 5 W. c. 23. f. 11.

As here is no method of conviction directed for this offence, the justices of the peace feem to have no cognizance thereof; but the trial and conviction must be at the

affizes, or in the courts at Westminster.

In the 5 An. c. 14. there are particular directions concerning the burning of ling, heath, or brakes in Sherwood forest, and other places in Nottinghamshire, which not being of general concern are here omitted.

VII. Of berons.

1. Every person who shall shoot at, kill, or destroy, shooting herons. any heron, with gun or bow, shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless on conviction he pay to the churchwardens for the use of the poor, 20s. for each heron, or, after one month from his commitment, become bound by recognizance with two fureties in 201. each, before two justices, not to offend again in like manner: The recognizance to be returned to the next sessions. I J. c. 27. f. 2.

2. No person, without his own ground, shall flea, take, None shall take or cause to be taken, by mean of craft or engine, any he-but by hawking. rons, unless it be with hawking; on pain of 6 s. 8 d. to him who shall sue by action of debt; or the sessions may

call before them persons suspected, and examine them; and if found in default, may commit them till they have found surety for payment of the forseiture to the king; and the justices shall have the tenth part of the forseiture for their labour. 19 H. 7. c. 11.

Young herons.

3. And no person, without his own ground, shall take any young herons out of the nest; on pain of 10s. in like manner for every young heron.

manner for every young heron. 19 H. 7. c. 11.

4. And if any person from March 31. to June 30. shall take or destroy the eggs of any heron; he shall be imprisoned for a year, and forfeit for every egg, 8 d. half to the king, and half to him that will sue by action of debt, or before the justices of the peace.

25 H. 8. c. 11.

VIII. Of other fowl.

In general; No manner of person, from the last day of March to the last day of June yearly, shall by day or night, take, or destroy any eggs of any kind of wild sowl, from or in any nest or place, where they shall chance to be laid by any kind of the same wild sowl; on pain of imprisonment for a year, and to forfeit for every egg of a bustard 20d. of a bittour or shovelard 8d. and of other wild sowl (except crows, ravens, boscards, and other sowl not used to be eaten 1d. half to the king, and half to him that will sue by action of debt: Also the justices of the peace may determine the same, as in cases of trespass. 25 H. 8. c. 11. *

VII. Laws

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With regard to fowl not used to be eaten, together with certain other noxious animals, there were provisions made by an ancient statute, viz. 8 El. c. 15. intitled, An all for the preservation of graine, which it were to be wished might be revived, with a proper consideration of the difference of the value of money betwitt that time and the present; by which it was required, that the churchwardens should levy by an assessment, and pay, for the heads of every three old crowes, choughes, or rookes, 1d; of fixe young crowes, choughes, or rookes, 1d; and for every sixe egges of any of them, 1d; for every twelve stares heads, 1d; for every heade of merten hawks, sursekytte, moldkytte, busarde, schagge, carmeraunt, or ryngtayle, 2d; and for two egges of them, 1d; for every iron or ofpraye's heade, 4d; for the heade of every wood wall, pye, jay, raven, kyte, or king's fisher, 1d; bullfynce,

VII. Laws for preserving the game of fish in particular.

There are some acts relating to this subject, of which, being of less general concern, it is thought sufficient to infert only the titles; viz.

(1) An act for the prefervation of fishing in the river

of Severn. 30 C. 2. c. 9.

(2) An act for the increase and better preservation of falmon and other fish, in the rivers within the counties of Southampton and Wilts. 4 An. c. 21. In which some alterations are made by the 1 G. st. 2. c. 18.

(3) An act for the better preservation and improvement of the fishery within the river of *Thames*, and for regulating and governing the company of fishermen of the said

river. 9 An. c. 26.

(4) An act for the more effectual preservation and improvement of the spawn and fry of fish in the river of *Thames*, and waters of *Medway*; and for the better regulating the fishery thereof. 30 G. 2. c. 21.

What follows feems best reducible under these heads:

bulfynce, or other bird that devoureth the blowth of fruit, 1 d; for the heade of every fox or gray, 12 d; and for the heade of every fytchewe, polcat, wefel, stote, fayre, bade, or wylde cat, 1 d; for the heads of every otter or hedgehogge, 2 d; for the heads of three rattes or twelve mise, 1 d; for the heade of every want or moldwarpe, ½ d.

And by another ancient statute 24 H. 8. c. 10. Every township was required to keep a crow-net, to destroy crows, rooks,

and choughs.

There is some shadow of these regulations still remaining in some parishes, where they give rewards for destroying several of the abovesaid noxious sowl and vermin. These statutes were sufferred to expire, probably because in a short time there would be no need of their continuance; but it might be convenient nevertheless, to revive the like provisions from time to time; and, amongst the rest of the ravenous tribe, to set a price now at length upon the head of that distinguished sowl, for the sake of which most of the ancient laws concerning the winged game were enacted, and which it was selony to destroy. But now the current hath received a contrary direction; and the hawk himself destroys more game, than gunpowder and hailshot which have usurped his empire.

I. The penalty of fishing in ponds and other private fisheries.

II. Rules about the fize, and preserving the breed

III. Rules concerning fishing in or near the sea.

IV. Importing fish.

I. The penalty of fishing in ponds and other private fisheries.

Who may erect a fifh pond.

1. Any man may erect a fish pond without licence; because it is a matter of profit, and for the increase of victuals. 2 Inft. 199.

Three years imprifonment and

2. If any trespassers in ponds be thereof attainted at the fuit of the party, great and large amends shall be awarded according to the trespass; and they shall have three years imprisonment, and after shall make fine at the king's pleafure (if they have whereof) and then shall find good surety, that after they shall not commit the like trespass: And if they have not whereof to make fine, after three year's imprisonment, they shall find like furety; and if they cannot find like furety they shall abjure the realm. And if none fue within the year and day, the king shall have the fuit. 3 Ed. 1. c. 20.

Note; Those are trespassers in ponds, who endeavour

to take fish therein. 2 Inft. 200.

Three months imprisonment and treble damages.

3. If any person shall unlawfully break, cut, or destroy any head or dam of a fish pond, or shall wrongfully fish therein, with intent to take or kill fish; he shall on conviction at the fuit of the king, or of the party, at the affizes or fessions, be imprisoned three months, and pay treble damages; and after the three months expired shall find fureties for his good abearing for seven years, or remain in prison till he doth. 5 El. c. 21. f. 2, 6.

Treble damages .10d

4. If any person shall use any net, angle, hair, noose, and 10s, to the troll, or fpear; or shall lay any wears, pots, fish hooks, or other engines; or shall take any fish by any means or device whatfoever, or be aiding thereunto, in any river, flew, pond, mote, or other water, without the confent of the lord or owner of the water; and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence; every such offender in taking or killing fish, shall pay any sum not exceeding

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treble damages, and 10 s. to the overfeers for the use of the poor, by distress; for want of distress, to be committed to the house of correction not exceeding one month, unless he enter into bond with one surety to the party injured, not exceeding 10 l. never to offend in like manner. 22 & 23 C. 2. c. 25. f. 7.

And the justice may take, cut, and destroy all such angles, spears, hairs, nooses, trolls, wears, pots, fish hooks, nets or other engines, wherewith such offender

shall be apprehended. f. 8.

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Persons aggrieved may appeal to the next sessions, whose determination shall be final, if no title to any land, roy-

alty, or fishery be therein concerned. f. 9.

5. Whereas divers idle, diforderly, and mean persons, Engines to be have and keep nets, angles, leaps; piches and other en-feized; gines for the taking and killing of fish out of the ponds, waters, rivers, and other fisheries, to the damage of the owners thereof, therefore no person hereafter shall have or keep any net, angle, leap, piche, or other engine for the taking of fish; other than the makers and fellers thereof, and other than the owner and occupier of a river or fishery; and except fishermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fishery, and every other person by him appointed, may feize, detain, and keep to his own use, every net, angle, leap, piche, and other engine, which he shall find used or laid, or in the posfession of any person fishing in any river or fishery, without the consent of the owner or occupier thereof. And also any person, authorized by a justice's warrant, may in the day time fearch the houses, outhouses, and other places of any person hereby prohibited to have or keep the fame, who shall be suspected to have or keep in his custody or possession any net, angle, leap, piche, or other engine aforesaid, and seize and keep the same to his own use, or cut or destroy the same, as things by this act prohibited to be kept by persons of their degree. 4 & 5 W.

6. 23. 1. 5.
6. If any person shall enter into any park of paddock Transportation, fenced in and inclosed, or into any garden, orchard, or or pecuniary forward, adjoining or belonging to any dwelling house, in feiture, or through which park or paddock, garden, orchard, or yard, any river or stream of water shall run or be, or wherein shall be any river, stream, pond, pool, moat, stew, or other water, and by any ways, means, or device whatsoever, shall steal, take, kill, or destroy, any

fish bred; kept, or preserved therein, without the consent of the owner thereof; or shall be aiding or affishing therein; or shall receive or buy any such fish, knowing the same to be so stolen or taken as aforesaid; and shall be convicted thereof, at the affizes, within six calendar months after the offence committed; he shall be transported for seven years. And any offender, surrendring himself to a justice, or being apprehended or in custody for such offence or on any other account, who shall make consession thereof, and a true discovery on oath of his accomplice or accomplices, so as such accomplice may be apprehended, and shall on trial give evidence so as to convict such accomplice, shall be discharged of the offence

fo by him confessed. 5 G. 3. c. 14. f. 1, 2.

And if any person shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish in any river or ftream, pond, pool, or other water (not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling house, but in any other inclosed ground being private property); he shall, on conviction before one justice, on the oath of one witness, forfeit 5 l. to the owner or owners of the fishery of fuch river or stream of water, or of fuch pond, pool, moat, or other water: And fuch justice, on complaint upon cath, may iffue his warrant to bring the person complained of before him; and if he shall be convicted before fuch justice, or any other justice of the county or place, he shall immediately after conviction pay the faid penalty of 51. to such justice, for the use of such person as the same is hereby appointed to be paid unto; and in default thereof, shall be committed by such justice to the house of correction for any time not exceeding fix months, unless the forfeiture shall be sooner paid: Or such owner of the fishery may bring an action for the penalty (within fix calendar months after the offence) in any of the courts of record at Westminster.

Provided, that nothing in this act shall extend to subject any person to the penalties thereof, who shall fish, take, or kill, and carry away, any fish in any river or stream of water, pond, pool, or other water, wherein such person shall have a just right or claim to take, kill,

or carry away such fish. f. 5.

[There seem to be some difficulties upon the face of this act; but the general purport thereof seemeth to be, for the protection of private fisheries, and not as intending to prohibit persons otherwise qualified, from taking

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any fish at all in any place whatsoever, unless such person hath an exclusive grant from the crown of a fishery within certain bounds.

As to the transportation clause; the prosecution must be at the affizes within fix calendar months after the offence committed. It would have answered the purpose more effectually, if the prosecution had been directed to be at the next affizes; for the assizes are not held precisely at fix months distance, so that an offender in the intermediate space may escape: and in some counties the affizes

are held but once a year.

But the greatest difficulty is upon the other clause, concerning the killing of fish, not in any paddock, garden, orchard, or the like, but within any other inclosed ground being private property. By this it feemeth generally to be understood, that no person (not having a private fishery) may kill fish, except in a river running thro' or by a common. But the application of the penalty feemeth to restrain the generality of the clause to private fisheries only. For the penalty is given to the owner of the fishery. A lord of a manor, as such, doth not seem to have an exclusive right to all the fifh within his manor, any more than to any other game. These animals, being feræ naturæ, are originally the king's; and are granted by him, with the advice and affent of the lords spiritual and temporal and commons in parliament affembled, to persons qualified by estate or degree, as the acts of parliament for that purpose set forth. In such case, no lord of a manor or other hath an exclusive privilege; but if another person comes upon his ground, who hath no right upon fuch ground, but hath a right by qualification . to kill game, fuch person is liable to an action, not for killing game, but only for the trespass. But a man by grant, or by prescription (as it seemeth, which is evidence of a grant), may claim to have an exclusive fishery within certain limits; and this statute seemeth intended to protect fuch fishery. And the proviso or exception feemeth to be inferted on the behoof of persons qualified; for it could not be supposed that the act intended to prohibit the owners themselves of fisheries from the taking of fish within their own liberties. But as there is a variety of opinions upon the aforefaid claufe, an explanation thereof might be of use.]

7. By the Black act before mentioned, if any person Felony, without being armed and disguised, shall unlawfully steal or take benefit of clergy.

away any fish out of any river or pond; or (whether

armed and disguised or not) shall unlawfully and maliciously break down the head or mound of any fish pond, whereby the fish shall be lost or destroyed, or shall rescue any person in custody for such offence, or procure any other to join with him therein; he shall be guilty of selony without benefit of clergy.

II. Rules concerning the affize, and preserving the breed of fish.

Salmon.

and fift under

1. If any person shall lay or draw any net, engine, or other device, or cause any thing to be done in the Severn, Dee, Wye, Teame, Were, Tees, Ribble, Merfey, Dun, Air, Ouze, Swaile, Calder, Wharf, Eure, Darwent, or Trent, whereby the spawn or fry of salmon, or any kepper or shedder falmon, or any salmon not 18 inches from the eye to the extent of the middle of the tail, shall be taken and killed; or shall set any bank, dam, hedge, stank, or net cross the same, whereby the salmon may be taken, or hindred from paffing up to spawn; or shall between July 31, and Nov. 12. (except in the Ribble, where they may be taken between Jan. 1. and Sept. 15.) take any falmon of any kind in any of the faid rivers; or fhall, after Nov. 12. yearly, fish there for salmon with any net less than 2 1 inches in the mesh; he shall, on conviction, in one month, before one justice, on view, confession, or oath of one witness, forfeit 5 l. and the fish, nets, and engines; half the faid fum to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction or gaol, not more than three months, nor less than one, to be kept to hard labour, and fuffer fuch other corporal punishment as the justice shall think fit: The nets and engines to be cut or destroyed, in presence of the justice: The banks, dams, hedges, and stanks, to be demolished at the charge of the offender, to be levied in like manner. 1 G. fl. 2. c. 18. J. 14.

Note; It is not faid, who shall have the fish; so that

it seemeth that they are forfeited to the king.

And no falmon out of the faid rivers thall be fent to London, under fix pounds weight; on pain that the fender, buyer, or feller, on the like conviction, shall forfeit 51 and the fish, half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to the house of correction or gaol, to be kept to hard labour for three months, if not paid in the mean time. id. s. 15.

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And persons aggrieved may appeal to the nex sessions.

id. J. 17. 2. No falmon shall be taken in the Humber, Ouze, Trent, Salmon spawn, Done, Arre, Derwent, Wherfe, Nid, Yore, Swale, Tefe, and smelts. Tine, Eden, or any other water wherein falmon are taken, between Sep. 8. and Nov. 11. Nor shall any young salmon be taken at mill-pools (nor in other places, 13 R. 2. A. I. c. 19.) from Midapril to Midsummer; on pain of having the nets and engines burnt for the first offence; for the fecond, imprisonment for a quarter of a year; for the third, a whole year; and as the trespass increaseth, so shall the punishment. And overseers shall be assigned to inquire hereof. 13 Ed. 1. st. 2. c. 47. That is, under the great feal, and by authority of parliament. 2 Inft.

And no person shall put in the waters of Thamise, Humber, Ouze, Trent, nor any other waters, in any time of the year, any nets called stalkers, nor other nets or engines whatfoever, by which the fry or breed of falmons, lampreys, or any other fish may in any wife be taken or destroyed; on the like pain. 13 R. 2. ft. 1. c. 19.

And the waters of Lon, Wyre, Merfee, Rybbyl, and all other waters in Lancashire, shall be put in defence as to taking of falmon, from Michaelmass to Candlemass, and in no other time of the year. And conservators shall be appointed in like manner. 13 R. 2. ft. 1. c. 19.

And the justices of the peace (and the mayor of London on the Thames and Medway) shall survey the offences in both the acts abovementioned; and shall survey and search all the wears in such rivers, that they shall not be very strait for the destruction of such fry and brood, but of reafonable wideness after the old affize used or accustomed; and they shall appoint under-conservators, who shall be fworn to make like furvey, fearch and punishment. And they shall inquire in sessions, as well by their office, as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted, to come before them; and if they be thereof convict, they shall have imprisonment, and make fine at the discretion of the justices: and if the same be at the information of an under-confervator, he shall have half

the fine. 17 R. 2. c. 9.

3. By the 1 El. c. 17. No person, of what estate, de-Spawn in general gree, and condition soever he be, shall take and kill any and fish under size and out of young brood, spawn, or fry of fish; nor shall take and season. kill any falmon or trouts, not being in feafon, being kep-

per or shedder; nor any pike or pickerel not being in length 10 inches sish or more; nor any salmon not being in length 16 inches sish; nor any trout not being in length eight inches sish; nor any barbel not being in length 12 inches: and no person shall sish or take sish by any device, but only with net or tramel, whereof the mesh shall be two inches and a half broad (angling excepted, and except smelts, loches, minnies, bulheads, gudgions, and eels): on pain of forseiting 20s. for every offence, and also the sish, nets, and engines.

(Note, in some editions of the statutes it is 20 l. in other 20 s. in the record it is not distinguishable whether it is pounds or shillings. The latter seems more adequate to the offence.)

And the conservators of rivers may inquire hereof by a jury; and in such case they shall have the fines.

The leet also may inquire hereof; and then the forseiture shall go to the lord of the leet. And if the steward do not charge the jury therewith, he shall forseit 40 s. half to the king, and half to him that shall sue. And if the jury conceal the offence, he may impanel another jury to inquire of such concealment; and if it is found, the former jury shall forseit every one 20 s. to the lord of the leet.

And if the offence is not prefented in the leet within a year, then it may be heard and determined at the fessions or affizes. (Saving the right of the conservators.)

And by the 33 G. 2. c. 27. No person shall take, or knowingly have in his possession either in the water or on fhore, or fell or expose to sale, any spawn, fry, or brood of fish, or any unfizeable fish, or fish out of feafon, or any fmelt not five inches long: and any person may seize the same together with the baskets and package, and charge a constable or other peace officer with the offender and with the goods, who shall carry them before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the profecutor; and the offender shall besides forfeit 20 s. to be levied by diffress by warrant of fuch justice, and distributed half to the prosecutor and half to the poor of the parish where the offence was committed (and any inhabitant of fuch parish, nevertheless, may be a witness); for want of sufficient difirefs, to be committed to the house of correction to be kept to hard labour for any time not exceeding three months, unless the forfeiture be sooner paid.—Provided, that the justice may mitigate the faid penalty, fo as not th

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to remit above one half. Persons aggrieved may appeal to the next sessions.—And the form of the conviction may be this:

Be it remembred, that on this _____day of _____in the _____year of the reign of ______A. O. is convicted before me ______one of his majesty's justices of the peace for the ______of ____and I do adjudge him to pay and forfeit the sum of _____. Given under my hand and seal the day and year abovesaid. J. 13, 15, 16, 17, 18, 19.

4. No person shall fasten any nets over rivers, to stand Nets standing day continually day and night; on pain of an hundred shil- and night. lings to the king. 2 H. 6. c. 15.

III. Rules concerning fishing in or near the sea.

1. No person shall take, kill, or destroy any lobsters Lobsters, on the coast of Scotland, from June 1. to Sept. 1. on pain of 51. to be recovered by any person who shall inform and sue for the same, on a summary complaint before two justices of the shire on the coast where the offence shall be committed. 9 G. 2. c. 33. s. 4.

2. Every person who shall set up any new wear along Erecting a new the sea shore, or in any haven, harbour, or creek, or wear. within sive miles of the mouth of any haven or creek, shall on conviction before one justice, or mayor, forseit for every offence 101. half to the king, and half to him that shall sue; to be levied by the constables or churchwardens, by distress. 3 7. c. 12. s. 2.

3. Every person who shall willingly take, destroy, or Spawn of sea fish, spoil any spawn, fry, or brood of any sea fish, in any wear or other engine or device whatsoever; shall forfeit for every offence 101. in like manner. 3 J. c. 12. f. 2.

4. And every person who shall sish in any haven, har-size of nets at bour, or creek, or within five miles of the mouth of any sea. haven, harbour, or creek of the sea, with any draw-net, or drag-net under three inches mesh, viz. 1½ inch from knot to knot (except for the taking of smoulds in Norfolk only), or with any nets with canvas, or other engine or device, whereby the spawn, fry, or brood of sea sish may be destroyed; shall in like manner forfeit such net, and also 10s. for every offence, half to the poor, and ha'f to him that shall sue. 3 7. c. 12. s.

But this act shall not extend to any net of lesser mesh, only for taking of herrings, pilchards, sprats, or lavid-nian. id. f. 3.

And by a subsequent statute, if any person shall use at sea, on the English coast, any traus-net, drag-net, or set-net, for catching of any fish (except hereings, pilchards, sprats or lavidnian) which hath the mesh less than 3½ inches from knot to knot; or which hath a false or double bottom; or shall put one net behind another; he shall, on conviction (after summons) before one justice where the offender resides or shall be sound, on oath of two witnesses, in one month after the offence, forseit the same, and also 201. half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to gaol for twelve months; and the nets to be burnt. I. G. st. 24 c. 18. Persons aggrieved may appeal to the next sessions. id.

Size of fea fifh.

5. By the same act of 1 G. st. 2. if any person shall bring to shore, or expose to sale any sish less than the following sizes from the eyes to the extent of the tail, viz. bret or turbet 16 inches, brill or pearl 14, codlin 12, whiting 6, bass and mullet 12, sole 8, place or dab 8, shounder 7; he shall forfeit the fish to the poor; and also 20 s. half to the informer, and half to the poor; to be levied in the like manner; for default of payment, or of sufficient distress, to be sent to the next house of correction, or other common gaol of the county, to be severely whipt and kept to hard labour six days, and not longer than 14. Persons aggrieved may appeal to the next seffices.

But by the 33 G. 2. c, 27. Bret or turbot, brill or pearl, altho' under the said dimensions, may be exposed to sale, so as the same be not sold by retail for above 6 d. a pound. And if any greater price shall be demanded or taken, or such fish shall not be weighed and measured if required; the same shall be forseited, and the offender shall also forseit 20 s. to be recovered, mitigated, and applied, as the penalties in the said act mentioned under the last head, relating to the spawn of sish, and sish under size, and out of season: and the money paid shall be returned to the party who paid the same. I, 11.

IV. Importing fish.

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or congers, taken by foreigners, shall be imported or exposed

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posed to sale; any person may seize the same, half for himself, and half for the poor. 18 G. 2. c. 2.

2. And by the 1 G. f. 2, c. 18, and 9 G. 2. c. 33. Penalty 1001. no fish taken by, or received of any foreigner, except protestants inhabiting in England, shall be imported (except eels, stock fish, anchovies, sturgeon, botarge, or cavear, lobster and turbet); on pain of 1001. and the master of the vessel 501. half to the poor, and half to the informer who shall sue in 12 months in any of the courts at West-minster.

For fishing, so far as the falt duties are concerned therein, may be consulted that part of the title Crtise, which treateth of the duties upon salt,

The fish markets in London and Westminster are regulated by the statutes of 22 G. 2. c. 49. 29 G. 2. c. 39. 33 G. 2. c. 27. and 2 G. 3. c. 15. which are too large and not general enough to be here inserted,

A. Appointment of a gamekeeper; on the 22 & 23 C. 2. c. 25. f. 2. 5 An. c. 14. f. 4. and 3 G. c. 11. f. 1.

A. L. esquire, lord of the manor of—do hereby nominate, authorise, and appoint A. G. of P. in the county
of—yeoman, to be my gamekeeper of and within my said
manor of—in the county aforesaid, with full power,
licence, and authority to kill any hare, pheasant, partridge, or
any other game whatsoever, in and upon my said manor of
for my sole use, and immediate benefit; and also to
take and seize all such guns, hows, greyhounds, setting dogs,
lurchers, or other dogs to kill hares or conies, ferrets, tramels,
lowbells, hays, or other nets, harepipes, snares or other engines
for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of my said manor of—shall be used by any person or persons who by
law are prohibited to keep or use the same. Given under my
hand and seal, this—day of—in the
year, &c.

SHA BREISHIN P. I.

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B. Warrant to fearch for dogs and engines; on the

Westmorland. { To

WHEREAS complaint hath been made unto me J. P. esquire, one of his majesty's justices of the peace in and for the faid county, upon the oath of A. I. of --- in the faid county, yeoman, that he the faid A. I. hath good ground to suspect and doth suspect that A. O. of—aforesaid in the county aforesaid, yeoman, being a person in no respect qualified by the laws of this realm so to do, bath and keepeth in his custody a greyhound [gun, net, &c.] to kill and destroy the game: These are therefore to command you in his majesty's name to enter into, and fearch in the day time, the houses, outboufes, and other places of him the faid A. O. ataforesaid, and if you there find any greyhound, &c. that you feize and keep the same for the use of A. L. esquire, lord of the manor of ____ in which manor the said houses, outhouses, and other places, are situate and do lie, or otherwise that you tut in pieces or destroy the same. Given under my hand and -day of --- in the year, &c. feal the-

C. Information against a person for keeping dogs or engines; on the 5 An. c. 14. f. 4.

Westmorland. THE information and complaint of A. I.

of—in the county of—yeoman, made before me J. P. esquire, one of his majesty's justices
of the peace for the said county, the—day of—in
the year—Who saith, That on the—day of—
in the year——at the parish of——in the county aforesaid, one A. O. of——in the county aforesaid, some and use a certain dog called a greyhound so as the
case is so kill and destroy the game, he the said A. O. not
being qualified by the laws of this realm so to do; whereby he
the said A. O. bath forfeited the sum of five pounds. And
thereupon he the said A. I. prayeth the judgment of me the justice aforesaid in the premisses, and that he may have one moiety
of the said forfeiture, according to the form of the statute in
that case made, and that the said A. O. may be summoned to
answer the premisses before me the justice aforesaid.

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D. Summons thereupon.

Westmorland. { To the constable of _____ in the faid county.

W HEREAS information and complaint hath been made before me J. P. efquire, one of his majesty's justices of the peace for the said county, that A.O. of—in the county aforesaid, shoemaker, on the——day of—in the county aforesaid, did keep and use a certain dog called a greyhound or as the case is to kill and destroy the game, he the said A.O. not being qualified by the laws of this realm so to do: These are therefore to require you forthwith to summon the said A.O. to appear before me at——in the said county, the—day of——at the hour of——to answer to the said information and complaint, and to be further dealt with according to law. And be you then there, to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand and seal the——day of——in the year——.

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E. Conviction of keeping dogs or engines; on the 5 An. c. 14. f. 4.

Westmorland. BE it remembred, that on the day of in the year of the reign of -of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at --- in the county aforesaid, A. I. of _____cometh before me J. P. esquire, one of the justices of our faid lord the king, affigned to keep the peace of our faid lord the king in the faid county, and also to hear and determine divers felonies, trespasses, and other mifdemeanors in the faid county committed, and giveth me the faid of ______ in the _____ year aforesaid, at the parish of _____ in the county aforesaid, one A. O. of the parish aforesaid in the county aforesaid, Shoemaker, not then having lands and tenements, nor any other estate of inheritance, in his own or his wife's right, of the clear yearly value of 100 l. per annum, nor for term of life, nor any lease nor leases of 99 years, nor for any longer term, of the clear yearly value of 1501. nor then being son and heir apparent of an esquire, nor of any other per-Son of higher degree, nor the owner nor keeper of any forest, park, chase, or warren, nor gamekeeper to any lord or lady of a manor, did keep and use a certain dog, called a greybound, to

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kill and destroy the game, against the form of the statute in that case made and provided: And afterwards upon the aforesaid day, and in the year first abovementioned, he the said A. O. after having been duly summoned in this behalf before me the justice aforesaid, appeareth and is present, in order to make his defence against the said charge, and having heard the same, be the said A.O. is asked by me the said justice, if he can say any thing for himself, why he the said A.O. should not be convicted of the premisses above charged upon him in form aforefaid; who pleadeth that he is not guilty of the faid offence: nevertheless on the day aforesaid in the year aforesaid, ataforesaid, in the county aforesaid, one credible witness, to wit, A. W. of yeoman, cometh before me the aforesaid justice, and before me the same justice upon his oath on the holy gospel to him then and there by me the aforesaid justice adminifired, deposeth, sweareth, and upon his oath aforesaid affirmeth, and faith, that the aforesaid A. O. on the -day ofaforesaid, in the year aforesaid at the parish offaid, in the county aforefaid, not then having lands and tenements, nor any other estate of inheritance, in his own or his wife's right, of the clear yearly value of 1001. per annum, nor for term of life, nor any lease nor leases of 99 years, nor for any longer term, of the clear yearly value of 1501. nor then being fon and heir apparent of an esquire, nor of any other perfon of higher degree, nor the owner nor keeper of any forest, park, chase, or warren, nor gamekeeper to any lord or lady of a manor, did keep and use a certain dog called a greybound, to kill and destroy the game: And thereupon the aforesaid A.O. the the county aforesaid, before me the same justice, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted: And for his offence aforesaid hath forfeited the sum of five pounds of lawful money of Great Britain, to be distributed as the statute aforesaid doth direct. In witness whereof, I the said justice to this present record of the conviction aforesaid, have set my hand and seal atfaid, in the county aforesaid, the -day of -aforesaid in the year aforesaid.

If he doth not appear upon the summons, the form may be varied accordingly; as is set forth specially under the title Conviction.

F. Warrant

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F. Warrant to distrain 51. for keeping dogs or engines; on the 5 An. c. 14. f. 4.

Westmorland. { To-----

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WHEREAS A.O. of _____ in the said county, shoemaker, is this day convicted before me J. P. efquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. I. a credible witness, for that he the said A.O. being a person not qualified by the laws of this realm so to do, on the _____day of ____in the ____year of the reign of _____did keep and use in the parish of _____ aforesaid, in the county aforesaid, a certain dog called a greybound, to kill and destroy the game, by virtue whereof he the said A. O. hath forfeited the sum of 51. to be distributed as herein after is mentioned: These are therefore in his said majesty's name, to command you to levy the said sum by distress of the goods of him the said A. O. and if within the space of [four] days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale, that you do pay one half of the faid sum of 51. to A. I. of --- in the said county, yeoman, who informed me of the faid offence, and the other half of the faid sum of 51. to the overseers of the poor of the parish of --- aforesaid, where the said offence was committed, for the use of the poor of the said parish; returning the overplus on demand unto him the said A.O. the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And if sufficient distress cannot be found of the goods of the said A. O. whereon to levy the said sum of 51. that then you certify the same to me, together with the return of this precept. Given under my hand and feal the - day of - in the-

It he doth not appear upon the fummons, the form may be varied accordingly; as is fer forth specially under the

G. Commitment

G. Commitment for want of distress, for keeping dogs and engines; on the 5 An. c. 14. f. 4.

Westmorland.

To the constable of _____in the faid county, and to the keeper of the house of correction at _____ in the said county.

WHEREAS A.O. of _____in the faid county, speemaker, was on the ____day of ____in the -year of ---- convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. not being a person by the laws of this realm qualified so to do, on the day of in the year aforesaid, did keep and use in the parish of aforesaid, in the county aforesaid, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said A. O. bath forfeited the sum of 51. of lawful money of Great Britain; And whereas on the faid - day of -in the year aforesaid, I did issue my warrant to the constable of --- to levy the faid fum of 5 1. by distress and fale of the goods of him the faid A. O. and to distribute the same according as is directed by the statute in that behalf made; and whereas it duly appears to me, as well on the oath of the faid constable, as otherwise, that he the faid constable bath used his best indeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of -----aforesaid, to apprehend the body of the said A. O. and him safely to convey to the house of correction at - in the said county, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you, the faid keeper of the faid house of correction, to receive into your custody in the said house of correction the said A. O. and him there safely to keep for the space of three months: and for so doing this shall be your sufficient warrant. Given under my hand and feal the--day of in the year, &c.

H. Certiorari bond, on a conviction for keeping dogs or engines; on the 5 An. c. 14. s. 2.

K NOW all men by these presents, &c. Whereas the above bound A.O. was lately convicted before J.P. esquire,

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efquire, one of his majesty's justices of the peace in and for the county of —— aforesaid, of keeping and using at — aforesaid in the said county, a greyhound to kill and destroy the game; And whereas the said A. O. hath since his said conviction sued out his majesty's writ of certiorari to remove the same, and the proceedings thereupon, before the king himself wherever he shall be in England on—[the day of the return of the certiorari]: The condition of the above obligation is such, that if the abovebound A. O. do and shall (according to the true intent and meaning of the statute in such case made) well and truly pay to the said A. I. within 14 days after the same conviction shall be confirmed, or a proceedendo granted thereupon, his full costs and charges which he shall sustain touching or concerning the said conviction and removal thereof by the said writ of certiorari; then the abovewritten obligation shall be void, otherwise of force.

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I. Warrant against a higler having game in his possession; on the 5 An. c. 14. s. 2.

Westmorland. To the constable of-

WHEREAS A. I. of—bath this day made information and complaint upon oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that on the—day of—now last past, A. O. of—in the parish of—in the county aforesaid, innkeeper, at—aforesaid, in the parish and county aforesaid, in the house of him the said A. O. then and there had in his possession one hare [or, did offer to sell one hare, or as the case, shall be] he the said A. O. being no way qualified by the laws of this realm, to have the said hare in his custody or possession; against the form of the statute in that case made and provided: These are therefore to command you, to bring the said A. O. before me or some other of his majesty's justices of the peace for the said county, to answer the premisses, and to be further dealt withal according to law. Given under my hand and seal, the—day of—in the—year, &c.

K. Warrant to levy 5 l. on the goods of a higher convicted of having game in his custody; on the 5 An. c. 14. s. 2.

Westmorland. To the constable of

WHEREAS A. O. of _____in the parish of —in the county aforefaid, higher, is on this -day of in the year of the - duly convicted before me J. P. efquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A.O. on the——day of——in the—— year of——at the parish of——aforesaid, in the county aforefaid, had in his custody and possession one hare, he the said A. O. being no way qualified by the laws of this realm to have the said have in his custody or possession, against the form of the statute in that case made, by reason whereof, he the said A. O. hath forfeited the sum of 51. These are therefore to require you to levy the said sum of 51. by distress of the goods of him the said A. O. and if within the space of [five] days next after such distress by you taken, the faid fum of 51. together with reasonable charges of taking and keeping the faid distress, shall not be paid, that then you do fell the faid goods fo by you distrained as aforesaid, and out of the money arising by such sale, that you do pay one half of the said sum of 51. to A. I. of yeoman, who informed me of the said offence, and the other half to the poor of the parish of aforesaid, within which parish the faid offence was committed; returning to him the faid A. O. the overplus on demand, the reasonable charges of taking, keeping, and felling the faid diftrefs, being first deducted. And if sufficient distress cannot be had of the goods of the said A. O. that you certify the same to me together with the return of this precept. Given under my hand and feal thein the--day ofyear of-

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L. Commitment on the same for want of distress; on the 5 An. c. 14. s. 2.

Westmorland. To the constable of—in the said county, and to the keeper of the house of correction at—in the said county.

WHEREAS A. O. of in the faid county, higher, was on the day of duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the faid county, upon the oath of A. W. of a credible witness, for that he the Said A. O. on the day of in the year of at the parish of aforesaid, in the county aforesaid, had in his custody and possession one hare, he the faid A. O. being no way qualified by the laws of this realm to have the faid have in his custody or possession, against the form of the statute in that case made, by reason whereof he the said A. O. hath forfeited the fum of 51. And whereas on the faid—day of—in the year aforefaid, I did issue my warrant to the constable of—to levy the faid sum of 51. by distress and sale of the goods of him the said A. O. and to distribute the same according as is directed by the faid statute: And whereas it duly appears to me, as well on the oath of the faid constable of --- as otherwise, that he the said constable of ____ hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be found whereon to levy the same; These are therefore to require you the constable of -- aforesaid, to carry the said A. O. to the faid bouse of correction at - aforesaid, and deliver bim to the faid keeper thereof, together with this precept. And you the faid keeper are hereby commanded to receive into your castody in the said house of correction him the said A. O. and him there safely to keep for the space of three months, without bail or mainprise; and for your so doing this shall be your sufficient warrant. Given under my hand and feal the day of ---

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M. Mittimus for carrying a gun; on the 33 H. 8.

Westmorland.

To the keeper of his majesty's gaol at ______in the county of ______aforesaid, and to his deputy or deputies there, and to every of them.

ORASMUCH as this present day, A. I. ofryeoman, and B. I. of yeoman, did arrest and bring before me at in the said county, one A. O. late in the faid county, taylor, whom they had feen and found the same day (as they said) shooting in a band gun, charged with powder and bail shot, at a coney, in a certain place in within the faid county, called -- contrary to the law of the realm, and thereupon prayed that justice might be done in that behalf: I John Moore, efquire, being the next justice of the peace in the faid county to the place aforesaid, did then at - aforefaid, upon the faid request, take the examination of the said A. O. and did also then and there hear the proofs of them the faid A. I. and B. I. touching the faid offence; And for that it did then manifestly appear unto me, as well by the testimonies of them the said A. I. and B. I. as also by the plain confession of him the faid A. O. that he the faid A. O. had not then lands, tenements, fees, annuities or offices, to the yearly value of an hundred pounds, and that he had shot in the faid hand gun in the manner and form as is aforefaid: I do fend you herewithal the body of him the faid A. O. as lawfully convicted of the said offence before me, requiring you in his majesty's name, to receive him into your said gaol, and him there safely to keep, until he shall have truly paid the pain and forfeiture of 101. of lawful money of Great Britain, laid upon him for his faid offence by the statute made in the three and thirtieth year of the reign of king Henry the eighth; that is to say, the one moiety thereof to our sovereign lord the king, and the other moiety to them the said A. I. and B. I. the first bringers of him before me. And this shall be your sufficient warrant in this behalf. Hereof fail you not, as you will anfwer for your contempt at your peril. Given under my hand and seal at -aforesaid, in the county aforesaid, the day of ____ in the ___ year of the reign of __

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N. Record of the conviction for carrying a gun; on the 33 H. 8. c. 6. from Mr. Dalton.

Westmorland. B E it remembred, that on the day of in the year of the reign of A. I. of yeoman, and B. I. of aforesaid, taylor, found and saw, at——in the county aforesaid, the day and year aforesaid, with a hand gun charged with gun-powder and leaden hail shot, shooting and discharging the said gun, at a certain coney then being in a certain place there, called—against the form of the statute in that case made and provided; and therefore, the day and year aforesaid, him the said A.O. at-aforefaid, they did arrest, and at - aforesaid before me efquire, one (and next unto the said place called) of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers trespasses and other misdemeanors in the same county committed, then with them did bring, requesting thereupon justice to be done; which request being heard, I the faid J. P. at - aforefaid, the day and year aforefaid, duly thereupon have examined the aforefaid A. O. ataforesaid, and the proofs of the aforesaid A. I. and B. I. in this behalf have taken: And because that as well by the proofs aforesaid, as by the confession of him the said A. O. at aforesaid, then and there it hath appeared to me manifestly, that the aforesaid A. O. at--- aforesaid, when he had not in his own right, nor in the right of his wife, to his own use, nor any other to the use of the said A. O. had lands, tenements, fees, annuities or offices to the yearly value of one hundred pounds, in the hand gun aforefaid, in manner and form aforefaid, did shoot, against the form of the statute aforesaid; I the said J. P. the afore-named A. O. at—aforesaid, the day and year afore-(aid, to the next gaol of our faid lord the king, atin the county aforesaid (of the trespass aforesaid before me convicted) have committed, there to remain until the penalty and forfeiture of 101. of lawful money of Great Britain, he shall truly pay or cause to be paid, to wit, one moiety thereof to our said lord the king, and the other moiety there-of to the said A. I. and B. I. the first bringers of the said A. O. before me as is aforesaid. In witness of all which, I the aforesaid J. P. to these presents have put my seal. Given

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Given at aforesaid, the day and year first above written.

O. Conviction for killing deer, from Tremaine's entries, 328, 329. which conviction was on the 13 C. 2. c. 10. but is here altered to grounds inclosed, to bring the offence within the 3 W. c. 10. which is done by the addition only of that single word [inclosed] with the alteration of the penalty.

Cumberland. D E it remembred that on the third day of D September in the year of the reign of our lord Charles the fecond now king of &cc. the thirty fecond, one Benjamin Granger of gentleman, cometh before me John Aglionby, efquire, one of the justices of our faid lord the king, assigned to keep the peace of our said lord the king in the faid county of C. at G. in the same county, and giveth me to understand and be informed, that one James Dobson, late of _____ and L. M. late of _____ on the 25th day of August in the year of the reign of our faid lord the now king, the 32d aforefaid, in a certain park then of the mast noble Henry duke of Norfolk, called Graystock park, in the parish of Graystock, in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been ufually kept, unlawfully hunted, and a certain fallow deer of the faid duke then in the same park killed, took, and carried away, without the confent of the faid duke then owner of the faid park, or of Andrew Huddleston, equire, then being chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided: And afterwards, to wit, on the aforesaid third day of September in the 32d year aforefaid, two credible witnesses, that is to say, J. H. of — and T. B. of — came before me the faid justice assigned &c. at G. aforesaid, and before me the faid justice assigned &c. upon their oath on the boly gospel of god to them then and there by me the aforefaid justice assigned &c. by the authority of the statute aforefaid administred and given, do depose, fwear, and say, and each of them doth depose, fivear, and fay, upon their oath aforefaid, that the aforefaid J. D. J. B. and L. M. on the aforefaid 25th day of August in the 32d year aforesaid, in the aforesaid park and ground inclosed, of the aforesaid duke of Norfolk, in the parish of Graystock aforefaid, unlawfully hunted, and the aforefaid fallow deer him the faid duke, then in the faid park and ground inclosed,

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took, killed, and carried away, without the confent of the same duke then owner of the faid park and ground inclosed, or of the aforesaid A. H. esquire, then with the custody of the same park and ground inclosed as is aforefaid chiefly intrusted. And thereupon they the aforesaid J. D. J. B. and L. M. on the said 3d day of September in the 32d year aforesaid, before me the said justice assigned &c. by the oath of two credible witnesses afore-said, according to the form of the statute aforesaid, are, and every of them is convicted. And for the offence aforefaid, every of them the aforefaid J. D. J. B. and L. M. according to the form of the statute aforefaid, bath severally forfeited the sum of 301. one third part thereof to the aforefaid B. G. the informer in this behalf as is aforefaid, another third part thereof to the use of the poor of the said parish of G. within which parish the offence aforefaid was committed, and the other third part thereof to the duke aforefaid, owner of the deer aforefaid. In witness whereof I the aforefaid justice to this present record of the conviction as aforefaid, have fet my hand and feal, at G. aforefaid, on the day and year first abovementioned.

John Aglionby.

P. Warrant of diffress for hunting and killing deer; on the 3 W. c. 10. f. 2.

Westmorland. { To

WHEREAS A. O. of yeoman, is this day duly convicted before me J. P. esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers trespasses and other misdemeanors in the faid county committed, by the oath of A. W. ofyeoman, a credible witness, for that he the faid A. O. on the - day of in the year of in a certain park, then of Sir P. M. barenet, in the parish of -- in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been usually kept, unlawfully did bunt, and a certain fallow deer of the faid Sir P. M. baronet, then in the same park did kill, take, and carry away, without the consent of the faid Sir P. M. baronet, then owner of the said park, or of any other person then chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided; by reason whereof he the faid A. O. hath forfeited the sum of 301. of lawful money of Great Britain to be distributed as herein after is mentioned.

These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods and chattels of him the said A. O. And if within the space of [six] days next after such distress by you taken, the said sum of 301. together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do fell the faid goods and chattels fo by you distrained as aforefaid; and out of the money arising by such sale, that you do pay one third part of the said fum of 30 l. to A. I. of ____ in the faid county, yeoman, who informed me of the faid offence; and one third part unto the churchwardens or overfeers of the poor of the said parish of -for the use of the poor of the said parish, and the other third part to the faid - owner of the faid deer; returning to him the faid A. O. the overplus upon demand, the reafonable charges of taking, keeping, and felling the faid diftiefs being first deducted. And if sufficient distress cannot be had or found, by and on which the faid fum of 30 1. may be levied, you are hereby required to certify the same to me, within two days after the date of this present warrant. Given under my hand and feal, at — in the county aforesaid, the — day of — in the — year of the reign

Q. Commitment for want of distress, for hunting and killing deer; on the 3 W. c. 10. f. 2.

Westmorland.

To the constable of——in the said county, and to the keeper of the common gaol at——in the said county, and to the chief officer of the market town of——in the said county, and to every of them.

HEREAS A.O. of——labourer, was on the

day of——duly convicted before me J.P.
efquire, one of his majesty's justices assigned to keep the peace
in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by the oath of A.W. of——yearman, a credible witness, for that he the said A.O. on the——day of—
in the——year——in a certain park then of—
esquire, in the parish of——in the said county, then and
long before and yet being ground inclosed wherein deer then
were and long before had been usually kept, unlawfully did hunt,
and a certain fallow deer of the said——esquire, then in
the same park did kill, take and carry qway, without the consent

-then owner of the said park, or of any fent of the faidother per son then chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided; by reason whereof he the said A. O. hath for seited the sum of 301. And whereas on the said -day ofin the year aforesaid, I did iffue my warrant to the constable of to levy the said sum of 30 l. by distress of the goods and chattels of him the faid A. O. and to pay over the faid. fum of 30 l. according as is directed by the statute aforefaid; And whereas it duly appears to me, as well on the oath of the faid constable of ____as otherwise, that he the said constable of hath used his best indeavours to levy the said sum of 30 1. on the goods and chattels of the faid A. O. as aforefaid, and that no sufficient distress can be found whereon to levy the same: Therefore in pursuance of the statute aforesaid, I do hereby command you the faid constable of ____bim the said A. O. to apprehend and safely to convey to the said common gaol at - aforesaid, in the county aforesaid, and him to deliver to the keeper thereof aforefaid, together with this precept: And I do bereby command you the faid keeper of the gaol aforefaid. to receive into your custody in the said gaol him the said A. O. and him there safely to keep for the space of one whole year; faving that within the faid year you deliver him the faid A. O. to the chief officer of being the next market town next adjoining to the place where the faid offence was committed, or to his under officer or officers, together with this precept, who are hereby respectively required to set the faid A. O. in the pillory in the said market town by the space of one hour on some market day. And hereof fail not, as you will respectively answer the same at your perils. Given under my hand and feal, at _____ in the faid county, the _____ day of _____ months in Freeze 1981 to the in the year-

R. Warrant to fearch for venison or skins; on the

Westmorland. { To the constable of

WHEREAS A. I. of——in the faid county, yeoman, bath this day made oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that divers fallow deer have of late been unlawfully killed in, and taken and carried away from the park and ground inclosed of——at——in the said county, and that he the said A. I. hath just cause to suspect, and doth suspect, that

venison or the skins of deer, or toyls whereby to take and kill deer, are concealed in the houses, outhouses, or other places belanging to the said houses of A.O. of -yeoman, and B.O. of yeoman, at aforesaid in the county aforesaid: These are therefore in his said majesty's name, and by virtue of the statute in that case made and provided, to require you that you do forthwith upon fight hereof, enter into and fearch the faid bouses, outhouses, and other places belonging to the said bouses, of them the said A.O. and B.O. at aforesaid; and if on such search you shall there find any venison, or skin of any deer, or toyls aforesaid, that you do apprehend the person or persons, in whose houses, outhouses, or other places aforesaid, such venison, skin, or toyls shall be found, and him or them so apprehended do carry before some of his said majesty's justices of the peace in and for the faid county, to be examined concerning the premisses, and further dealt withal according to law. Given under my hand and feal, the--in the year-

Gaming.

Gaming not an offence at common law.

I. M.R. Dation fays, that playing at eards and dice, and the like, are not prohibited by the common law; neither are they mala in fe, of their own nature, but only prohibited by statute. Dalt. c. 46,

Gaming house a nufance.

2. But it hath been faid, that all common gaming houses are nusances in the eye of the law, as being great temptations to idleness, and apt to draw together numbers 1 Haw. 198. of disorderly persons.

Gaming houses 33 H. 8.

3. By the statute of the 33 H. 8. c. 9. No person shall prohibited by the for his gain, lucre, or living, keep any common house, alley, or place of bowling, coyting, cloysh, cayls, half bowl, tennis, dicing table, or carding, or any unlawful game; on pain of 40s. a day. f. 11.

But it was refolved upon this clause, in the third year of 7. 1. that if the guests in an inn or tavern, call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, these are not within the statute; for altho' the games be used in any inn, tavern or other house, yet if the house be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the house, this is not within the

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year his l den, statute, nor is such person that plays in such house that is not kept for lucre or gain, within the penalty of that law. Dalt. c. 46.

And moreover, by the same statute it is further enacted, that every person using and haunting any the said houses and plays, and there playing, shall forseit 6 s. 8 d. 33

H. 8. c. 9. f. 12.

And all and every justices of the peace, mayors, sheriffs, and other head officers, may enter all such houses and places, where such games shall be suspected to be holden; and as well the keepers of the same, as also the persons there resorting and playing, may take, arrest, and imprison, and keep in prison, until the said keepers have sound sureties to the king's use, to be bound by recognizance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley, or place; and also that the persons there so found, be in like case bound by themselves, or with sureties, no more to play, haunt, or exercise from thencesorth, in, at, or to any of the said places, or at any of the said games. id. s. 14.

And the mayors, sheriffs, bailiffs, constables, and other head officers within every city, borough, or town, shall make due search weekly, or at the furthest once a month, in all places where any such houses or places shall be suspected to be kept; and if they shall not make such search at the farthest once a month, if the case so require, every such person offending shall forseit 40 s. for each month.

id. f. 15.

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And by the same act, no manner of artificer, handicraftsman, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariners, sistemen, watermen, or any serving man, shall play at the tables, tennis, dice, cards, bowls, clash, coyting, logating, or any other unlawful game, out of Christmas, on pain of 20 s. and in Christmas to play at the said games only in their master's houses, or in their master's presence; and also no person shall at any time play at bowls in open places out of his garden or orchard, on pain of 6 s. 8 d, id. s. 16.

But any master may license his servant to play at cards, dice, or tables, with himself, or with any other gentleman openly in his house, or in his presence. id. s. 22.

And any nobleman, or other person having 100 l. a year, may command or license his servants, or family of his house, to play within the precinct of his house, garden, or orchard, at cards, dice, tables, bowls, or tennis,

as well among themselves, as others repairing to the

same house. id. f. 23.

And all justices of the peace, mayors, bailiffs, sheriffs, and other head officers, and every of them, finding or knowing any person using unlawful games, contrary to this act, may commit every fuch offender to ward, there to remain without bail or mainprife, till he be bound by obligation to the king's use, in such sum as by the discretion of the faid justices, or other such officers shall be thought reasonable, that they shall not from thenceforth use such unlawful games. id. f. 16.

And by the 2 G. 2. c. 28. Where it shall be proved on the outh of two witnesses before any justice of the peace, as well as where he shall find upon his own view, that any person hath used any unlawful game contrary to the said statute, the said justice shall have power to commit him to prison without bail, unless and until he shall enter into recognizance, with fureties, or without at the discretion of the justice, that he shall not from thenceforth play at

or use such unlawful game. f. 9.

And where any the forfeitures abovementioned shall be found within the precincts of any leet, the lord shall have one half, and the other half shall be to him that shall sue in any of the king's courts; and elsewhere, they shall be half to the king, and half to him that shall sue in like manner. 33 H. 8. c. 9. s. 18.

But by the 31 El. c. 5. All fuits to be pursued upon any statute (that is, any statute then in force) for using any unlawful game, shall be sued and prosecuted, or otherwise heard and determined, in the general quarter fessions or assizes of the county where the offence shall be committed, or in the leet within which it shall happen, and not in any wife out of the county. f. 7.

And no privilege of parliament shall be allowed to any person, against whom a prosecution shall be commenced, for keeping any common gaming house, or place for playing at any prohibited game. 18 G. 2. c. 34. f. 7.

4. By the 30 G. 2. c. 24. If any person licensed to sell any forts of liquors, or who shall fell or suffer the same to 30 G. 2. c. 24. be fold in his house, outhouse, ground, or apartment thereto belonging, shall knowingly suffer any gaming with cards, dice, draughts, shuffle boards, mississippi, or billiard tables, skittles, nine pins, or with any other implement of gaming, in his house, outhouse, ground, or apartment thereto belonging, by any journeyman, labourers, fervants, or apprentices; and shall be convicted

Gaming in publick houses prohibited by the

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thereof on confession, or oath of one witness, before one justice, within fix days after the offence committed; he shall forfeit for the first offence 40 s. and for every other offence 10 l. by differes by warrant of such justice; three fourths of which shall be to the churchwardens for the use of the poor, and one fourth to the informer. f. 14.

And if any journeyman, labourer, apprentice, or fervant, shall game in any house, outhouse, ground, or apartment thereto belonging, wherein any liquors shall be fold; and complaint thereof shall be made on oath before one justice where the offence shall be committed: he shall issue his warrant to the constable or other peace officer of the place wherein the offence is charged to have been committed, or where the offender shall reside, to apprehend and carry the offender before some justice of the place where the offence shall be committed, or where the offender shall refide; and if fuch person shall be convicted thereof by the oath of one witness or confession, he shall forfeit not exceeding 20 s. nor less than 5 s. as the justice shall order, every time he shall so offend and be convicted as aforesaid, one fourth to the informer, and three fourths to the overfeers for the use of the poor; and if he shall not forthwith pay down the same, such justice shall commit him to the house of correction or some other prison of the place where he shall be apprehended, to be kept to hard labour for any time not exceeding one month, or until he shall pay the

forfeiture. /. 15. And any justice unto whom complaint upon oath shall be made, of any offence committed against this act, shall

issue his warrant for bringing before him or some other justice of such place, the person charged with such offence; and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction: and if it shall appear upon oath to the fatisfaction of such justice, that any person within his jurisdiction can give material evidence on behalf of the profecutor or of the person accused, and who will not voluntarily appear; he shall issue his summons to convene him to give his evidence; and if he shall neglect or refuse to appear on such summons, and no just excuse shall be offered, then (on proof upon oath of the fummons having been duly ferved upon him) he shall issue his warrant to

bring such witness before him; and on his appearance, if he shall refuse to be examined on oath, without offering just cause for such refusal, the justice shall commit him to the publick prison for any time not exceeding

three months. f. 16.

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And in all proceedings on this act, any person shall be admitted to be a witness, notwithstanding his being an inhabitant of the place wherein the offence shall have been committed. f. 18.

And the justice before whom any person shall be convicted upon this act, shall cause the conviction to be drawn up in the form or to the effect following;

To wit. DE it remembred, that on this - day offor the said county of ______or, for the _____riding, or di-town of ______or, for the city of ______or, for the city of ______or, as the case shall be for and the faid -do adjudge him, or her, to pay and forfeit for the same, the fum of --- Given under --- the day and year aforesaid.

The same to be written upon parchment, and transmitted to the next sessions, to be filed amongst the records; and if any person shall appeal to the said sessions, the justices there shall, upon receiving the said conviction, proceed to hear and determine the matter. J. 19.

And no certiorari shall be granted, to remove any pro-

ceedings on this act. f. 20.

And if any person convicted of any offence punishable by this act, shall think himself aggrieved by the judgment of the justice before whom he shall have been convicted, he may appeal to the next fessions, and the execution of the judgment shall in such case be suspended, the person convicted entring into recognizance at the time of the conviction, with two fureties in double the fum he shall have been adjudged to pay, upon condition to profecute fuch appeal with effect, and to be forthcoming to abide the judgment and determination of the faid fessions: and the fessions shall award such costs as shall appear just and reasonable to be paid by either party; and if the judgment shall be affirmed, the appellant shall immediately pay the fum adjudged to be forfeited together with fuch cofts as the court shall award, or in default thereof shall fuffer the pains and penalties by this act inflicted upon persons respectively who shall neglect to pay or shall not pay the forfeitures by this act to be paid. f. 21.

And no person punished by this act, shall be punished

by any other law. f. 22.

5. By the 25 G. 2. c. 36. any house, room, garden, or other place kept for publick dancing, mufick, or other entertainment

Gaming house within London and 20 miles thereof.

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entertainment of the like kind, in London, or within 20 miles thereof, without licence as hereafter following (except the theatres of Drury-Lane, Covent-Garden, the Haymarket, and other entertainments exercised by letters patents or licence of the crown, or of the lord chamberlain) shall be deemed a disorderly house or place, and the keeper thereof shall forfeit 100 l. with full costs to him who shall sue (in six months) in any of the courts at Westminster. And the person who shall appear to act as master, or as having the management of such disorderly house, shall be deemed the keeper thereof.

Which said licence shall be granted at the last preceding Michaebnas sessions, and shall be signed and sealed by four justices in open court, and afterwards be publickly read by the clerk of the peace, with the names of the justices subscribing the same; and no licence shall be granted at any adjourned sessions; nor shall any see be taken for the same. And there shall be inserted in such licence, and made conditions thereof, that the words sollowing shall be affixed in large capital letters over the door or entrance of every such licensed house or place, viz. Licensed pursuant to ast of parliament of the twenty-sight of king George the second; and that it shall not be opened

before five in the afternoon. And in case of a breach of either of the said conditions, the licence shall be forfeited, and revoked by the justices at the next sessions, and shall not be renewed.

And to incourage profecutions against persons keeping bawdy houses, gaming houses, or other disorderly houses, the constable, on notice given him in writing by any two inhabitants of the parish, paying scot and lot, of any person keeping such house, shall forthwith go with them to a justice of the peace; and shall (on their making oath that they believe the contents of such notice to be true, and entring into a recognizance of 20 s. each to produce evidence of the offence,) enter into a recognizance of 30 s. to prosecute with effect such person at the next sessions or affizes, as to the justice shall seem meet: and on the constable entring into such recognizance, the justice shall issue his warrant for bringing the accused persons before him, and shall bind them over to appear at the said sessions or affizes, and shall also, if he thinks sit, demand and take surety for their good behaviour in the mean time.

And if the constable shall neglect or refuse, upon such notice, to go before a justice, or to enter into recognizance, or shall be wilfully negligent in carrying on the prosecution, he shall forfeit 201. to each of the said inhabitants.

And

And on trial, any person may give evidence against the defendant, notwithstanding his being a parishioner, or

having entred into fuch recognizance.

And the constable shall be allowed all the reasonable expenses of the prosecution, to be ascertained by two justices; and shall be paid the same by the overseers of the poor: and if such person be convicted, the overseers shall also forthwith pay to l. to each of such inhabitants, on pain of forfeiting double to the said persons.

And no indictment of fuch offence shall be removed by

certiorari.

Lofing to l, at a time.

6. By the 9 An. c. 14. Any person who shall at any time or fitting, by playing at cards, dice, tables, or other game whatsoever, or by betting on the sides of such as do play, lose to any one or more persons so playing or betting, in the whole the sum or value of 101. and shall pay or deliver the same, or any part thereof; the person so losing and paying or delivering the same, shall be at liberty in three months to sue for and recover the same with costs, in any court of record: and if he shall not sue in three months, it shall be lawful for any person to sue for and recover the same and treble value, with costs; half to such person who shall sue, and half to the poor. f. 2.

And every person who shall so be liable to be sued for the same, shall be obliged and compellable to answer on oath such bill as shall be preferred against him, for discovering the sum of money or other thing so won. 9 An.

c. 14. f. 3. 18 G. 2. c. 34. f. 3.

Or other game whatfoever] M. 15 G. 2. Goodburn and Marley. It was determined, that borfe races are within

these general words. Str. 1159.

Lofing tol. at a 7. And by the 18 G. 2. c. 34. If any person shall win time, or 201. in or lose at play, or by betting, at one time, the value of 24 hours.

101. or within the space of 24 hours the value of 20 l. he shall be liable to be indicted for such offence, in six months, either in the king's bench or at the assizes; and being convicted, shall be fined sive times the value of the sum won or lost, which (after such charges as the court shall judge reasonable, allowed thereout to the prosecutor and evidence) shall go to the poor. s. 8.

And if any offender shall discover another offender, so that he be convicted, the discoverer shall be discharged from all penalties by reason of such offence, if not before convicted thereof, and shall be admitted as an evidence to

prove the fame. f. 9.

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But nothing in this act shall repeal the aforesaid act of

9 An. id. f. 10. 8. If any person shall play at cards, dice, tables, tennis, Losing above bowls, kittles, shovelboard, or any other pastime or game rool, at a time whatfoever (other than for ready money) or bet on the fides of fuch as shall play, and shall lose any sum or other thing, exceeding 100 l. at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same at the time when he shall lose the same; in such case he shall not be bound to make it good, but the contract for the same, and for every part thereof, and all assurances and fecurities for the fame shall be void; and the winner shall forfeit treble value of all such sums as he shall so win above 100 l. half to the king and half to him that shall fue in one year in the courts at Westminster, with treble costs. 16 C. 2. c. 7. f. 3.

In the case of Humphries and Rigby, M. 1698. A bill was brought, to be relieved against a bond for money won at all fours. The plaintiff was a diffiller, and the defendant a tapfter at a bowling green. And it appearing that the defendant laid the cards, and turned up the knave of clubs, which was Jack, several times together; and being an unreasonable sum for such persons to venture; the plaintiff was relieved, and the bond ordered to be delivered up, altho' this case was not within the statute, the bond being for less than 100 l. For equity always relieved before the statute, where any fraud appeared. 2 Abr.

Eq. Caf. 184.

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9. And all notes, bills, bonds, judgments, mortgages, Securities to be or other securities, where the whole or any part of the void. confideration shall be for money or any other valuable thing, won by playing at cards, dice, tables, tennis, bowls, or other game whatfoever; or by betting on the fides of fuch as do game; or for the reimburfing or repaying any money knowingly lent or advanced, at the time and place of fuch play, to any person so gaming or betting, or that shall (during such play) so play or bett, --- shall be void: And where such securities shall be of lands, or such as incumber or affect the same; they shall enure and be to the fole use and benefit of, and devolve upon such person as might have fuch lands, in case the said grantor, or perfon fo incumbring the fame, had been dead: And all conveyances to hinder them from devolving on fuch person, shall be void. 9 An. c. 14. J. 1.

Securities] H. 19 G. 2. Barjeau and Walmfley. plaintiff and defendant gamed together, at toffing up for

time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was infifted for the defendant, that by the o An. c. 14. the plaintiff could maintain no action; for by that act, all fecurities for money lent to game with shall be void; and the borrowing on an agreement to pay, is a fecurity. But Lee Ch. J. held, that this was not a case within the act, for there is not the word fecurities, as it stands in this act, must mean lasting liens upon the estate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confined the act to written securities. Wherefore the plaintiff ob-

tained a verdiet for 1261. Str. 1249.

In the case of Rawdon and Shadwell, Apr. 23. 1755. A bill was brought by the plaintiff for an injunction, and that the defendant might deliver up the plaintiff's bond for 1150 l. for money lost at play, and might refund a sum of 1501. paid by the plaintiff in part of the faid bond. It appeared, that the plaintiff was a lieutenant, and the defendant a captain in Cotterel's regiment; and about 14 years ago, being quartered at Leeds in Yorkshire, the defendant won of the plaintiff in one evening the fum of 11501. The plaintiff was under age; and being so, gave a bond for the money to the defendant; and afterwards, when of age, paid 1501. in part. It was infifted for the plaintiff, that the securities by the statute of the 16 C. 2. were totally void, and ought to be delivered up; that the property of an infant in money lost at play, is not altered, and therefore trover would lie; and the statute of the o An. was mentioned, and a case in 2 Mod. 91. For the defendant, it was urged, that the plaintiff on the same evening won of another in the same company, to wit, the furgeon of the regiment, a larger fum than the 1150. which has been paid by him. That fair gaming is not malum in fe. It is only prohibited fub modo. That the cale cited was of money lost with false dice, which the court takes cognizance of as a cheat. That the statute of An. gives the court jurisdiction only as to a discovery. That as to the 1501. it was paid after he came of age; and if the court should order the defendant to refund at the distance of 14 years, it would occasion an infinite number of applications. That the statute of 16 C. 2. gives no remedy to recover money already paid. there 11

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there has been too long an acquiescence. That money paid, even in cases of bribery and corruption, cannot be recovered at law. That the statute of An. has directed an action within three months, for money lost and paid at play—The lord chancellor said, the decree he should make was not sounded on any imputation on the character of the desendant, who had put in a very candid answer. But this is a breach of the law, from a salse principle of honour. And he was of opinion, that the plaintiss was intitled to the whole relief prayed; that a party may come into this court to have a void security delivered up; that refunding the money is of course, as the statute has made the security void to all intents and purposes.

10. And any two justices may cause to come, or to be Persons suspensionally before them, every person whom they shall have of supporting themselves to suspensionally to have no visible estate, profession, gaming, or calling, to maintain themselves by, but do for the most part support themselves by gaming; and if such person shall not make it appear to the said justices, that the principal part of his expences is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for 12 months, and in default of his finding such securities, shall commit him to the common gaol, until he shall find such securities as aforesaid. 9 An. c. 14.

And if he shall, during the time for which he shall be bound, at any one time or sitting, play or bet for any sums or other thing exceeding in the whole the value of 20s. such playing shall be deemed a forfeiture of the recognizance. 6.7.

11. If any person shall by any fraud, unlawful device, Cheating, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittles, shovelboard; or by cocksightings, horse races, dog matches, foot races, or other passimes or games; or by bearing a share in the stakes; or by betting on the sides of such as shall play, act, ride, or run as aforesaid,—win any sum or other valuable thing; he shall forfeit treble the value, half to the king and half to the party grieved (if he shall sue in six months), otherwise to any person who shall sue in one year next after the said fix months, in any of the courts at Westminster, with treble costs. 16 C. 2. c. 7. s. 2.

And by the 9 An. c. 14. If any person shall by any fraud or shift, cousenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at Vol. II.

cards, dice, tables, tennis, bowls, or any the games aforefaid, or bearing a share in the stakes, or betting on the fides of fuch as do play, win any fum of money or other valuable thing, and shall be convicted thereof upon indictment or information; he shall forfeit five times the value of fuch money or other thing fo won, and shall be deemed infamous and fuffer fuch corporal punishment as in cases of wilful perjury; and fuch penalty to be recovered by fuch person as shall sue for the same, by such action as

aforesaid, s. 5.

T. 9 G. 2. K. and Luckup. The defendant was convicted on an information upon this act, which fays, that he shall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine should be set upon the defendant, if he refused to speak with the prosecutor. But by the court, All the judgment that we can give is, that he is convicted; and a new action must be brought upon that judgment for the forfeiture, which was thought sufficient to deter the offenders. In the case of recusancy, there is no other judgment. And the defendant was discharged, without any fine or costs. Str. 1048.

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12. And for the preventing such quarrels as may happen on the account of gaming; if any person shall assault and beat, or challenge to fight, any other person whatfoever, on account of any money won by gaming, playing, or betting, at any the games aforefaid, he shall on conviction thereof by indictment or information, forfeit to the king all his goods and chattels and personal estate whatfoever, and shall also suffer imprisonment without bail or mainprife, in the common gaol of the county where the conviction shall be had, during the term of two years. 9 An. c. 14. f. 8.

Royal palaces excepted.

13. It is generally provided by the several statutes, that nothing therein shall hinder any person from playing at any the games aforefaid, within any of the king's royal palaces, where he shall then reside.

Lottery, a nufance.

14. By the 10 & 11 W. c. 17. All lotteries are declared to be publick nusances; and all grants, patents, and licences, for such lotteries, to be against law. f. 1.
15. No person shall expose to be played, drawn, or

Keeping or play-

ing at a lottery. thrown at, or fhall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatfoever: and every person who shall expose to be played, drawn, or thrown at, any fuch lottery, play, or device, shall forfeit 500 l. one third to the king, one third to the poor, and one third with double costs to him that shall sue in the courts at Westminster; and the offenders shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided. 10 & 11 W. c. 17. f. 2.

And every person who shall play, throw, or draw at any fuch lottery, play, or device, shall forfeit 201. in like

manner. f. 3.

And all justices of the peace, mayors, constables, and other civil officers shall use their utmost endeavours to prevent the drawing of any fuch unlawful lottery; by all lawful ways and means; and every person who shall set up, or by writing or printing publish the fetting up any fuch unlawful lottery, with intent to have fuch lottery drawn, shall forfeit 100 l. one third to the king, one third to the poor, and one third with full costs to him who shall sue in the courts at Westminster. 9 An. c. 6. ſ. 56.

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16. Every person who shall keep any office or place, Insurances for making infurances on marriages, births, christnings, or fervice, or any other office or place, under the denominations of fales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of small sums of money, shall forfeit 5001. one third to the king, one third to the poor, and one third with full costs to him who shall fue. And every printer, or other person, who, shall by writing or printing publish the setting up or keeping any fuch office or place, shall forfeit 100l. in like

manner. 10 An. c. 26. J. 109.

17. Every person who shall keep, any office or place, Sales of lands under the denomination of fales of houses, lands, advow- or goods; and fons, presentations to livings, plate, jewels, ships, goods, chances in pub-or other things, for the improvement of small sums of money; or shall fell or expose to sale the same or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be devided among them by the chances of the prizes in some publick lottery; or shall deliver out tickets, to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such proposals or schemes; or shall make, print, or publim, any proposal or scheme of the like nature, under any denomination whatfoever, - and fhall be thereof convicted, on oath of one witness, by two justices where the offence

shall be committed, or the offender shall be found, he shall, over and above any penalties by any former act made against private lotteries, forfeit 5001. one third to the king, one third to the informer, and one third to the poor, to be levied by diffress and sale by warrant of such justices, and shall also by such justices be committed to the county gaol without bail for one whole year, and from thence till the faid fum of 5001. shall be paid. Provided that persons aggrieved may appeal to the next quarter fessions. And every person who shall be adventurer in, or any way contribute on the account of any fuch fales, lotteries, propofals, or schemes, shall forfeit double the fum contributed, with costs, half to the king, and half to him that shall fue in the courts at Westminster.

8 G. c. 2. f. 36, 37.

And by the 12 G. 2. c. 28. If any person shall erect, set up, continue, or keep, any office or place, under the denomination of a fale of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards, or dice; or shall make, print, advertise, or publish propofals or schemes for advancing small sums by several persons, amounting in the whole to large sums, to be divided among them by chances of the prizes in some publick lottery established by act of parliament, or shall deliver out tickets to the persons advancing such sums, to intitle them to a share of the money so advanced, according to fuch proposals or schemes; or shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatfoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatfoever; --- he shall, on conviction before any justice of the peace (or mayor) on the oath of one witness, or view of such justice, or confession, forfeit 2001. by distress and sale, by warrant of one justice of the county or town where the offence shall be committed; which faid forfeiture (after deducting reafonable charges of the profecution) shall go one third to the informer, and two thirds to the poor of the parish (except in Bath, where the faid two thirds shall go to the poor of the hospital there.) J. I.

And if the offender shall not have sufficient goods, whereon to levy the penalties, or shall not immediately pay or give fecurity for the fame; the justice before whom he shall be convicted, may commit him to the common

gaol, not exceeding fix months. f. 8.

And if any witness shall neglect or refuse to appear, upon fummons, or shall refuse to give evidence, or give, false evidence; he shall forfeit 50 l. by distress, by warrant of the person issuing such summons; and if he have not fufficient goods whereon to levy the 50 l. he shall be committed to the common gaol for fix months. 18 G. 2.

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But if any person think himself aggrieved by the judgment of any justice or mayor, he may appeal to the next fessions, giving reasonable notice to the prosecutor, and entring into a recognizance before some justices of the peace where the conviction was made, with two fureties, on condition to try fuch appeal at fuch next feffions. And if the conviction shall be affirmed, the party appealing shall pay to the prosecutor treble costs. 12 G. 2. c. 28. f. 5.

And no conviction shall be quashed by the sessions for want of form; nor shall be removed by certiorari, till af-

ter determination in the fessions. id. f. 6.

And if any justice, or mayor, shall neglect his duty herein; he shall forfeit 101. with full costs, half to him that shall sue in any court of record or at the assizes, and

half to the poor. id. f. 9.

Moreover, every fuch fale of houses, lands, advowfons, presentations, plate, jewels, ships, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, shall be void; and the fame being exposed to fale in manner aforefaid, shall be forfeited to such person as shall sue for the same in any court of record, or at the assizes. id. J. 4.

And, finally, every person who shall be an adventurer in any of the faid games, lotteries, or fales, shall forfeit

501. in like manner. id. f. 3.

18. The games of ace of hearts, faro, basset, and ha- Ace of hearts, zard, shall be deemed games, or lotteries by cards or dice; faro, basset, and every person who shall set up, or been these shall search. and every person who shall set up, or keep these games, shall be liable to all the abovementioned penalties, for setting up or keeping any the games or lotteries in this act mentioned. 12 G. 2. c. 28. f. 2.

And every person who shall play, set at, stake, or punt at any of the faid games, shall forfeit 50 l. in like man-

ethner. J. 3, the product that he have have to be have

Paffage.

19. Also the game of passage, and every other game with one or more die or dice, or with any other instrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and the other games played with the back-gammon tables, only excepted) shall be deemed games or lotteries by dice, within the faid act of 12 G. 2. c. 28 .- 13 G. 2. 6, 19. / 9.

Roly poly.

20. Also by the 18 G. 2, c. 34. No person shall keep any house, room, or place for playing, or suffer any perfon within fuch place, to play at roly poly, or any other game with cards or dice already prohibited by the laws of this realm; and if any person shall keep such house, or fuffer any person to play at roly poly, or other game with cards or dice prohibited by law, he shall be liable to the penalties and profecution, as by the faid act of the 12 G. 2. c. 28.—18 G. 2. c. 34. f. 1.

And if any person shall play at roly poly, or any game with cards or dice prohibited by law; he shall be liable to the penalties and profecution, as by the faid act of the

Poreign lotteries.

12 G. 2.—18 G. 2. c. 34. f. 2. 21. If any person shall, by colour of any grant from any foreign prince or state, set up any lottery, or undertaking in the nature of a lottery, under any denomination whatfoever; or shall make, print, or publish any proposal for any fuch lottery or undertaking; or shall fell or difpose of any ticket in any foreign lottery; and shall be convicted thereof, on oath of one witness, before two justices where the offence shall be committed, or the offender shall be found, he shall over and above any penalties by former acts against unlawful lotteries, forfeit 2001. one third to the king, one third to the informer, and one third to the poor, to be levied by diffress by warrant of fuch justices; and shall also by them be committed to the common gaol for one year, and from thence till the faid fum of 2001. be paid: provided, that persons aggrieved may appeal to the next quarter sessions. 9 G. 6. 19. 1. 4, 5.

And by the 6 G. 2. c. 35. If any person shall sell, procure, or deliver any ticket, receipt, chance, or number in any foreign or pretended foreign lottery, or in any class, part or division thereof, or in any undertaking in the nature of a lottery; or shall fell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or shall receive any money for any such ticket,

receipt,

receipt, chance, or number, or in confideration of any money to be repaid in case any ticket or number in any foreign or pretended foreign lottery, or any class, part, or division thereof, shall prove fortunate; and shall be convicted thereof in the courts at Westminster, or on the oath of one witness before two justices where the offence shall be committed, or the offender shall be found; he shall forfeit 2001, one third to the king, one third to the informer, and one third to the poor; the same (in case of conviction before the justices) to be levied by distress by warrant of fuch justices; and shall also be committed to the common gaol for a year, and from thence till the 200 l. be paid; provided, that persons aggrieved may appeal to the next quarter fessions. s. 29, 30.

22. No person, other than the plaintiff and defendant, How far an ofshall be incapacitated from being a witness, touching any fender may be a offence against the laws for preventing excessive and deceitful gaming, by reason of having played, betted, or staked at any prohibited game. 18 G. 2. c. 34. f. 5.

Gaol and gaoler.

For breaking of gaol, see Posson breaking.

- I. Building and repairing of gaols.
- II. Who shall have the keeping of gaols.
- III. Gaoler shall receive criminals.
- IV. How they shall be maintained.
 - V. Selling of strong liquors in gaols.
 - VI. How prisoners may be set on work.
 - VII. How they shall be restrained and kept.
 - VIII. How they shall be delivered.
 - IX. Of gaolers permitting escapes.
 - X. Concerning debtors.
 - XI. Concerning the prisons of the King's bench and Marshalsea.

I. Building and repairing of gaols.

THE justices, or the greater number of them, within the limits of their commission, upon presentment of the grand jury at the assizes (or sessions, 12 G. 2. c. 29. f. 13.) of the insufficiency or inconveniency of the county gaol, may contract with any person for the building, finishing, or repairing the same. 11 & 12 W. c. 19. f. 1, 2. The expence thereof to be paid by the treasurer, out of the general county rate. 12 G. 2. c. 29.

But this shall not extend to gaols held by inheritance; nor to charge any persons in any town or liberty which have common gaols for felons, and commissioners of affize or gaol delivery, for any affessment to the making the common gaol for the shire. 11 & 12 W. c. 19. f. 4, 5.

II. Who shall have the keeping of gaols,

The gaol itself is the king's, but the keeping thereof is incident to the office of the sheriff, and inseparable from it; except such gaols whereof any persons have the keeping by inheritance or succession. 14 Ed. 3. st. 1. c. 10. 19 H. 7. c. 10. 2 Inst. 589.

And therefore the sheriffs shall put in such keepers for

whom they will answer. 14 Ed. 3. ft. 1. c. 10.

But by the 3 G. c. 15. f. 10. None shall buy the office of gaoler, on pain of 500 l. half to the king, and half to him that shall sue.

And a gaoler in fact, is as much punishable for a misdemeanor in his office, as if he were a rightful gaoler. 2 Haw. 134.

III. Gagler shall receive criminals.

All felons shall be imprisoned in the common gaol, and

not elsewhere. 5 H. 4. c. 10.

And if the gaoler refuses to receive a felon, or take any thing for receiving him, he shall be punished for the same by the justices of gaol delivery. 4 Ed. 3. c. 10. Dall. c. 170.

But vagrants and other criminals, offenders, and perfons charged with small offences, may for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices in their judgment shall think proper. 6 G. c. 19.

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IV. How they shall be maintained.

Lord Coke fays, the gaoler cannot refuse the prisoner victuals, for he ought not to fuffer him to die for want

of fustenance. I Inft. 295.

But this is denied by others; and as there are several statutes which provide for the maintenance of prisoners, without supposing the gaoler any way obliged to it, it seemeth that this opinion is not maintainable. Bac. Abr.

Gaol, gaoler. F.

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For by the 14 El. c. 5. and 12 G. 2. c. 29. they are to be provided for by a fum to be paid out of the general county rate, by the high constables, to such sufficient perfons dwelling nigh the gaols, as shall be appointed by the justices in open fessions, who shall be there ready to receive it.

V. Selling of strong liquors in gaols.

By the 24 G. 2. c. 40. No licence shall be granted for retailing spirituous liquors within any gaol or prison; and if the gaoler shall sell, lend, use, or give away, or suffer the fame (except by way of medicine) he shall forfeit 100 l. half to the king, and half with full costs to him who shall fue. J. 17.

And any justice, on information on oath, that spirituous liquors are kept or disposed of in such gaol, may enter and fearch, or iffue his warrant to fearch for, and

feize, and stave, and destroy the same. f. 18.

And if any person shall indeavour to bring any spirituous liquors into fuch gaol, the gaoler or his fervants may apprehend and carry him before a justice; and if by the oath of one witness or otherwise such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding three months, unless he shall immediately pay down fuch fine, not exceeding 20 l. and not less than rol. as the justice shall impose, to be paid half to the informer, and half to the poor of such gaol. J. 19.

And a copy of the three clauses above, shall be hung up in each gaol, on pain of the gaoler forfeiting 40s. to be levied by warrant of one justice, on conviction on the oath of one witness: and any justice may enter and demand a fight of such copy, and if not shewn to him, he thall immediately convict such gaoler: one half of the

Gaol and gaoler.

faid penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of fuch gaol, f. 20.

And by the 29 G. 2. c. 12. No person shall retail ale, beer, or other liquors, in any prison, without being licensed in like manner as alehouse-keepers.

VI. How prisoners may be set on work.

The justices in their general fessions, if they find it needful, may provide a stock of such materials as they find convenient for the fetting poor prisoners on work, to be paid for by the treasurer out of the general county rate; and may pay and provide fit persons to oversee and fet fuch prisoners on work; and make fuch orders for accounts concerning the premisses, as shall be thought needful, and for punishment of neglects and other abuses, and for bestowing the profits arising by the labour of the prifoners for their relief. Provided that the sum to be so paid do not exceed the rate of 6 d. a week for any one parish. 19 C. 2. c. 4. f. 1. 12 G. 2. c. 29.

VII. How they shall be restrained and kept.

The county gaol is the prison for malefactors; but prifoners for debt, where escape lies against the sheriff for their escaping, may be kept in what place the sheriff pleases. L. Raym. 136.

By the 31 C. 2. c. 2. if any person shall be committed to any prison, for any criminal or supposed criminal offence; he shall not be removed from thence, unless it be by babeas corpus or some other legal writ; or where he is removed from one prison or place to another, within the fame county, in order to his trial or discharge; or in case of fudden fire or infection, or other necessity: on pain that the person figning any warrant for such removal, and the person executing the same, shall forfeit for the first offence 100 l. and for the second 200 l. to the party grieved. J. 9.

But on emergent occasions, as in case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices (12.) may, if they shall find it needful, provide other fafe places (with the owner's confent) for the removal of fick or other persons out of the

usual gaols. 19 C. 2. 6. 4. J. 2.

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By the 22 & 23 C. 2. c. 20. The gaoler shall not put, keep, or lodge prisoners for debt and felons together in one room or chamber; but they shall be put, kept, and lodged separate and apart from one another in distinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. J. 13.

Nevertheless it seemeth generally in all cases where a man is committed to prison, especially if it be for felony, or upon an execution, or but for a trespass or other offence, every gaoler ought to keep fuch prisoner in safe and close custody; safe, that he cannot escape: and close, without conference with others or intelligence of things Dalt. c. 170,

And therefore if the gaoler shall license his prisoner to go abroad for a time, and then to come again, or to go abroad with a keeper, tho' he come again, yet these are escapes. Dait. c. 170.

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his escape. 1 H. H. 601. Dalt. c. 170, and it is faid, that a gaoler is no way punishable for keeping even a debtor in irons. 2 Haw. 152.

But the learned editor of Hale's History observes, that this liberty even in the case of a felon (much more in the case of a prisoner for debt) can only be intended, where the officer has just reason to fear an escape; as where the prisoner is unruly, or makes any attempt to that purpose; but otherwise, notwithstanding the common practice of gaolers, it feems altogether unwarrantable, and contrary to the mildness and humanity of the laws of England, by which gaolers are forbidden to put their prisoners to any pain or torment. And lord Coke, 2 Inft. 381. is express, that by the common law it might not be done. I H. H.

And if the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law: and this is the cause, that if a prisoner die in gaol, the coroner ought to fit upon him; and if the death was owing to cruel and oppressive usage on the part of the gaoler or any officer of his, it will be deemed wilful murder in the person guilty of such durels. 3 Inst. 91. Fost, 321, 322,

But if a criminal, indeavouring to break the gaol, affault his gaoler, he may be lawfully killed by him in the attray. 1 Haw. 71. 1 H. H. 496. For gaolers and their officers are under the same special protection that other ministers of justice are. And therefore if in the necessary

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discharge of their duty they meet with resistance, whether from prisoners in civil or criminal suits, or from others in behalf of fuch prisoners, they are not obliged to retreat as far as they can with fafety, but may freely and without retreating repel force with force. And if the party fo refifting happeneth to be killed, this on the part of the gaoler, or his officer, or any perfon coming in aid of him will be justifiable homicide. On the other hand, if the gaoler, or his officer, or any person coming in aid of him, should fall in the conflict, this will amount to wilful murder in all persons joining in such resistance. It is homicide committed in defiance of the justice of the

kingdom. Foft. 321.

But forafmuch as the gaol is intended, in most cases, for custody and not for punishment; and confinement it felf, especially in such dismal abodes as it is to be feared many of the gaols are, is fufficiently afflictive and difconfolate; human nature will plead for those miserable objects, that their condition be rendred as tolerable as the case will admit of; particularly with regard to cleanliness, which is the parent of health; and wholsome air, which is life itself. A remarkable effect of want of care in this respect, Sir Michael Foster takes notice of, in the case of one Mr. Clarke, who was brought to his trial at the Old Baily fessions in April 1750. It being a case of great expectation, the court and all the passages to it were extremely crouded. The weather also was hotter than is usual at that time of the year. Many people who were in court, were fenfibly affected with a very noisome fmell. And it appeared foon afterwards, upon an inquiry ordered by the court of aldermen, that the whole prison of Newgate, and all the passages leading thence into the court, were in a very filthy condition, and had long been fo. What made these circumstances to be at all attended to was, that within a week or ten days at most after the fession, many people who were present at Mr. Clarke's trial, were feized with a fever of the malignant kind, and few who were feized recovered. The fymptoms were much alike in all the patients; and in less than fix weeks the distemper intirely ceased. At the time this disaster happened, there was no fickness in the gaol, more than is common in fuch places. Which circumstance, that diftinguisheth this from most of the cases of the like kind which we have heard of, fuggefts a very proper caution, not to presume too far upon the health of the gaol, barely because the gaol fever is not among the prisoners.

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For without doubt, if the points of cleanliness and free air have been greatly neglected, the putrid effluvia which the prisoners bring with them in their cloaths or otherwife, especially where too many are brought into a crouded court together, may have fatal effects on people who are accustomed to breathe better air; though the poor wretches, who are in some measure habituated to the fumes of a prison, may not always be sensible of any great inconvenience from them. The persons of chief note who were in court at this time, and died of the fever, were Sir Samuel Pennant lord mayor for that year, Sir Thomas Abney one of the justices of the common pleas, Charles Clarke esquire one of the barons of the exchequer, and Sir Daniel Lambert one of the aldermen of London. Of less note, a gentleman of the bar, two or three students, one of the under sheriffs, an officer of lord chief justice Lee who attended his lordship in court at that time, feveral of the jury on the Middlefex fide, and about forty other persons whom business or curiosity had brought thi-Foft. 74.

VIII. How they shall be delivered.

By the 3 H. 7. c. 3. Those that have the custody of gaols, must certify the names of all prisoners, to the justices of gaol delivery, in order to their trial or discharge; on pain of 51.

And if a gaoler detains a prisoner in gaol after his acquittal, unless it be for his fees (not for meat, drink, or lodging) this is an unlawful imprisonment. 2 Inft. 53.

And a gaoler must not disobey a writ of babeas corpus, for want of his fees; but the court will not turn the prifoner over till the gaoler be paid all his fees. 2 Haw. 151.

IX. Of gaolers permitting escapes.

If the gaoler voluntarily fuffer a prisoner to escape, he shall be punished in the same manner as the prisoner ought to have been who escaped; and if he negligently permit him to escape, he shall be punished by fine and imprisonment. And the sheriff shall answer for him. 2 Haw. 134, 5, 6.

But the principal gaoler is only fineable for the voluntary escape of a felon suffered by his deputy; for no one shall suffer capitally for any crime, but he who is actually guilty of it. 2 Haw. 125.

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Gaol and gaoler.

But for a negligent escape suffered by his bailisf, the sheriff is as much liable to answer, as if he had actually suffered it himself; and the court may charge either the sheriff or bailisf for it: and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 Haw. 135.

X. Concerning debtors.

Arrefting and carrying to gaol.

1. By the 32 G. 2. c. 28. No sheriff, bailiff, or other officer, shall carry any person by him arrested or being in his custody by virtue of any writ or other process, to any tavern, alehouse, or other publick victualling or drinking house, or to the private house of any such officer or of any tenant or relation of his without his free consent; nor charge him for any liquor, victuals, or other thing whatfoever, but what he shall call for of his own accord: nor cause or procure him to call for any such, but what he shall call for voluntarily; nor demand, directly or indirectly, any other or greater fee than is by law allowed; nor take any gratuity for keeping him out of gaol; nor carry him to gaol within 24 hours from the time of the arrest, unless such person arrested shall refuse to be carried to some safe and convenient dwelling house of his own appointment within some city or market town (if there arrested), otherwise within 3 miles from the place of arreft, so as such dwelling house be not the house of the person arrested, and be within the respective division or

And no sheriff, bailiff, or other officer, shall take more for one or more nights lodging, or for a day's diet, or other expences of any person under arrest, than shall be allowed by order of sessions: which sessions shall make order therein, and vary the same from time to time as they shall see occasion; and shall cause a copy of every such order, and of every variation or alteration thereof, signed by the clerk of the peace, to be put and kept up in some conspicuous place in the sessions house or other proper place, that the same may be there seen and examined. \(\int 2. \)

And every sheriff, and other person intrusted with the execution of process, shall deliver a printed copy of the several clauses in this act relating to bailiffs and other persons to be imployed under them, to every such bailiff and other person; and shall also make it part of the condition of the bond to be given by such bailiff or other person, that he will shew and deliver a copy of the said clauses to

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every person he shall arrest and go with to any publick or other house where any liquor shall be fold, and that he will permit every person so arrested or any friend of his, to read over the same clauses before any liquor, meat, or victuals shall be called for or brought to such person: and if any bailiff shall offend in the premisses; he shall, befides the breach of the condition of the bond, be deemed guilty of a misdemeanor in the execution of the process, and punishable as such by virtue of this act. f. 3.

2. And the sheriffs and gaolers shall suffer any prisoner Gaoler to suffer for debt, at his will and pleasure to send for or to have the prisoner to brought unto him at feafonable times in the day, any beer, faries, ale, victuals, or other necessary food, from what place he shall think fit, or can have the same; and also to have and use such bedding, linnen, and other necessaries, as he shall have occasion for and think fit, or shall be supplied with, without purloining or detaining the fame, or requiring him to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him in

relation thereunto. J. 4.

3. The two lords chief justices and lord chief baron, Justices to effect or two of them, together with the mayor and two alder-blish tables of men of London, or with three aldermen without the and orders for mayor, in respect of the prisons within the said city; and the regulation the faid lords chief justices and chief baron, or two of of gaols, them, together with three justices of the peace of Middlesex and Surry respectively, for the prisons within the faid counties; and elsewhere, the justices in sessions,shall establish tables of the rates and fees to be taken by gaolers within their respective jurisdictions, and vary the same from time to time as they shall see occasion. fame to be figned respectively by the said judges, mayor, aldermen, and justices within London, Middlesex, and Surry; and elsewhere, to be figned by 3 or more justices in festions, and afterwards reviewed and confirmed or moderated by the judges of affize (or juffices of great feffions in Wales and Cheshire) at the next affizes to be held after making or varying the same as aforesaid; the same to be afterwards figned by the faid judges of affize and three justices of the peace of such division or place respectively. J. 5.

And proper rules and orders, for the better government of the respective gaols and prisoners therein, shall be made, and altered from time to time as there shall be occasion, by the courts of Westminster hall for the several prisons belonging to the faid courts: And by the faid lords chief justices

justices and chief baron or two of them, together with the mayor of London and two aldermen, or with 3 aldermen without the mayor, for the prisons within the said city: and by the said lords chief justices and chief baron or two of them, together with 3 justices of the peace, for the prisons within Middlesex and Surry; and elsewhere, by three or more justices in sessions, for the prisons within their respective districts; the same to be afterwards reviewed, and altered if thought necessary, by the judges of assize at the next assizes after making or altering the same: And after every making or altering as aforesaid, the same shall be signed by the said several persons authorized

to make, review, or alter the same. f. 6.

And duplicates of every such table of sees and of orders which shall be made for the prisons belonging to the courts of Westminster hall shall be inrolled in such court: and for any other prisons, shall be transmitted to the clerk of the peace, to be inrolled by him, without see; and every such clerk of the peace shall cause another copy thereof to be hung up in the court where the assizes or quarter sessions shall be held, there to remain and be inspected; and shall cause another copy thereof to be transmitted to the gaoler; and such gaoler shall forthwith cause the same to be hung up in some open place and in a conspicuous manner in his gaol; and to be there kept up, so as that the prisoners may have free resort thereto, at reasonable times in the day, without paying any thing for the same. id.

And the courts of Westminster hall shall, in every Michaelmass term, inquire whether such tables of sees and such rules or orders are there hung in the several prisons to them belonging, and duly complied with: and the judges of affize shall make like inquiry, and shall supply and redress whatever they shall find neglected or transgressed relating thereunto; and shall expressly give in charge to the

grand jury, to make inquiries thereof. f. 7, 8.

And no gaoler shall take, directly or indirectly, of any prisoner for debt damages costs or contempt, any other see for his commitment, or coming into gaol, chamber rent there, release or discharge, than shall be allowed in the said table of sees: and every sherisf, gaoler, or other officer, who shall in any wife offend against this act, shall for every such offence (over and above such other penalties or punishments as he shall be liable to by the laws now in force) forseit to the party grieved 501. with treble costs. s. 12.

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4. The courts at Westminster, justices of affize (and Charities to great fessions), justices of the peace, and commissioners gaols. for charitable uses, shall from time to time inquire concerning gifts and bequests to poor prisoners; who may fend for papers and witnesses, and examine persons upon oath, and order and fettle the payment thereof in fuch eafy and expeditious way as they shall think proper. f. 10.

And a table of fuch benefactions, after every fuch fettling thereof, shall be transmitted to the clerk of the peace, to be registred by him without fee; and another table to the gaoler, to be hung and kept up by him in fome conspicuous place in his gaol, where the prisoners

may have easy resort thereto without see. s. 10.

5. On the petition in term time of any person being Redress of grieve or having been under arrest, complaining of any exaction ances. or abuse by the gaoler or other officer, unto any of the courts of record at Westminster from whence the process issued; or, in vacation time, to any of the judges of such court, or to the judges of affize or great fessions, or judges of any other court of record from whence fuch process iffued; they shall hear and determine the same in a summary way, and make fuch order thereupon for redreffing the abuses, and for punishing the offender, and for making reparation to the party injured, as they shall think just, together with full costs of the complaint; the same to be inforced by attachment, or in any other manner as other orders of the faid courts or judges may be inforced.

6. If any person shall be charged in execution, for any How prisoners fum not exceeding 1001. and shall be minded to deliver may be dischargup to his creditors who shall so charge him in execution, up their effects. all his estate and effects towards the satisfaction of the debt wherewith he shall so stand charged; it shall be lawful for fuch prisoner, before the end of the first term which shall be next after his being so charged in execution, to exhibit a petition to any court of law from whence the process issued, or to the court into which he shall be removed by habeas corpus, or shall be charged in custody, and shall remain in the prison thereof; certifying the cause of his imprisonment:

And fetting forth therein, not only a just and true account of all the real and personal estate which he or any person in trust for him is intitled to at the time of his petitioning, and of all incumbrances and charges affecting the same; but also a just and true account of all the real and personal estate which he, or any person in trust for Vol. II.

him or for his use, was interested in or intitled to at the time of his imprisonment, either in possession, remainder or expectancy, to the best of his belief, and so far as his knowledge extends; and likewise a just and true account of all securities wherein any part of his estate consistent, and of all deeds, evidences, writings, books, bonds, notes, and papers concerning the same or relating thereto; and the names and places of abode of the witnesses to all securities, bonds, and notes, and where they are to be met

with, fo far as his knowledge extends:

And before fuch petition shall be recieved by any fuch court, he shall cause to be given or left unto or for all the creditors at whose suit he shall stand charged in execution as aforesaid, their executors or administrators, and at their usual places of abode (or to their attorney or agent last imployed in the cause, if such creditors, or their executors or administrators, cannot be met with, and not otherwise) 14 days at least before such petition shall be presented and received, a notice in writing, figned with his name or mark, importing, that he doth intend to petition the court from whence the process issued upon which he stands charged in execution, or into the prifon to which he shall have been removed by habeas corpus, or fhall fland charged in execution on any judgment recovered on any bill or declaration filed or delivered in any fuch court; and also fetting forth in fuch notice, a true copy of the account or schedule of his estate which he intends to deliver into court (except the necessary wearing apparel and bedding of him and his family, and the tools or instruments of his trade or calling, not exceeding the value of 101. in the whole):

And an affidavit of the due service of such notice shall be delivered with the petition, and openly read in the

court :

And if the court shall be satisfied with the regularity of such notice, the petition shall be received; and the court shall thereupon, by order or rule of the said court, cause the prisoner so petitioning to be brought up, and the said creditors or their executors or administrators to be summoned to appear personally or by their attorney in the said court:

And on their appearance, or if they shall not appear, then on affidavit of the due service of the said order on them, or on their attorney if they cannot be met with; such court shall, in a summary way, examine into the matter of the petition, and tender to the prisoner the oath following;

I A. B. do swear, in the presence of almighty God, that the account by me fet forth in my petition presented to this honourable court, doth contain a full and true account of the real and personal estate, debts, credits, and effects whatsoever, which I, or any in trust for me, at the time of my first imprisonment in this action, or at any time fince, had, or was in any respect intitled to, in possession, reversion, or remainder (except the wearing apparel and bedding of or for me and my family, and the tools or instruments of my trade or calling, not exceeding 101. value in the whole): and also an account how much of my real and personal estate, debts, credits, or effects, hath since been disposed of, released or discharged, and how, to whom, and on what confideration, and for what purpose, and how much thereof, I or any person or persons in trust for me, have, or at the time of my presenting my said petition to this honourable court, had, or which I am or was, or any person in trust for me, or for my use, is any ways interested in, or intitled to, in possession, reversion, remainder, or expectancy; and also a true account of all deeds, writings, books, papers, securities, bonds, and notes, relating thereto, and where the same respectively now are, to the best of my knowledge and belief, and what charges are now affecting the real estate I am now seised of, or intitled to sif such prifoner shall be then seised of any real estate]; and that I have not, at any time before or fince my imprisonment, directly or indirectly, fold, leafed, affigned, mortgaged, pawned, or otherwise disposed of, or made over in trust for myself, or otherwise, than is mentioned in such account, any part of my messuages, lands, tenements, estates, goods, stock, money, debts, or other real or personal estate, whereby to have or accept any benefit, advantage, or profit, to my felf or my family, or with any view, design, or intent, to deceive, injure, or defraud, any of my creditors to whom I am indebted: So help me God.

And thereupon, the court may order the messuages, lands, tenements, goods, and effects contained in the account, or so much of them as shall be sufficient to satisfy the said debts and the fees due to the gaoler, to be (by a short indorsement on the petition, and to be signed by the prisoner) assigned and conveyed to the said creditors, their heirs, executors, administrators, and assigns, for the benefit of them who shall have so charged such prisoner

Gaol and gaoler.

foner in execution (subject nevertheless to all prior in-

cumbrances affecting the fame):

And the estate, interest, or property of all messuages, lands, goods, debts, estates, and essects which shall belong to such prisoner, shall by such assignment be vested in the persons to whom the assignment shall be made; and they may take possession, and sue for the recovery thereof, in like manner as assignees of commissioners of bankrupts:

And on such affignment and conveyance being executed by such prisoner, he shall be discharged out of custody by rule or order of such court; which order being produced to, and a copy thereof left with the sheriff or gaoler, he shall forthwith discharge him, without taking any see, or detaining him in respect of chamber rent, lodging, or

otherwise:

And the person to whom the estate shall be assigned, shall with all convenient speed sell and dispose thereof, and divide the net produce amongst the creditors who shall have charged such prisoner in execution before the time of presenting the petition, in proportion to their re-

spective debts.

But if any person at whose suit such prisoner stood charged in execution, shall not be satisfied with such prisoner's oath, and shall either personally, or by his attorney (if he cannot personally attend, and proof shall be made thereof to the satisfaction of such court) desire surther time to inform himself of the matters contained therein; such court may read the prisoner, and direct him, and the person distalished, to appear either in person or by his attorney, on some other day at farthest within the first week of the term next sollowing the time of such examination; but sooner if such court shall think sit.

And all objections which shall be made as to the infufficiency in point of form against the schedule, shall be only made the first time such prisoner shall be

brought up.

And if at such second day, the creditor distaissied shall not appear, or shall be unable to discover any estate or effects of the prisoner omitted in the account set forth in his petition; in such case, the court shall order the prisoner to be discharged, on his executing such assignment and conveyance as aforesa d: unless such creditor shall insist upon his being cetained, and shall agree by writing signed by him (or by his attorney, in case such creditor shall be out of England) to pay weekly a sum not exceeding 2 s.

4 d.

4d. as such court shall think fit, to the said prisoner, to be paid weekly every monday; and in such case, the prisoner shall be remanded: But if any sailure shall be made in the payment thereof, such prisoner, upon application in term time to such court, or in vacation time to any judge of such court, may by order of such court or judge be discharged, on his executing such assignment as aforesaid; proof being made on oath, of the non-payment, for any week, of such sum.

And if any prisoner shall refuse to take the said oath, or shall be detected before such court or judge of falsity therein, or shall refuse to execute such assignment; he

shall presently be remanded. f. 13.

Provided that where more creditors than one shall defire to have such prisoner detained; every of such creditors shall only respectively pay such sum, not exceeding 18.6d. a week, as the court shall order. J. 14.

But where any prisoner shall be charged in execution in any county gaol, or in any other prison above 20 miles from Westminster hall or from the court out of which the execution iffued; then, on the like petition as aforefaid, to the court from whence such execution issued, or in the prison of which such prisoner is and stands charged in execution; and on affidavit in like manner as aforefaid being made and left with fuch petition; fuch court, on being fatisfied with the truth of fuch affidavit, shall make a rule to cause the prisoner to be brought to the next affizes (or great fessions in Wales and Cheshire) to be holden for the place where he shall be imprisoned; and the expence of bringing him not exceeding 1s. a mile, shall be paid to the gaoler out of the prisoner's estate if the same shall be sufficient to pay such expence; and if not, then to be paid by the treasurer of the county or place in which such prisoner shall be imprisoned, as shall be allowed by the judge; and the creditors, or their executors or administrators, shall by order of the court from whence the process issued, be summoned to appear at the said assizes, if they can be met with; if not, then the attorney last employed for fuch creditors; and a copy of fuch order shall be served on every such creditor, or his executors or administrators, or left at his dwelling house or usual place of abode, or with his attorney last employed, 14 days at least before such affizes. And upon affidavit of such service thereof being laid before the judge of affize, he shall, on being fatisfied with the truth of fuch affidavit, appoint a him (or by his attent. in cale such

out of England) to pay weekly a fum

time for hearing the matter of the petition, on fome certain day and time, on the crown fide of fuch court, during such affizes. And on the appearance of the faid creditors; or, in default of their appearance, either in person or by attorney, then on proof of their being duly ferved with the notice, and of a copy of the schedule being comprifed in fuch notice, and of the rule of fuch court for their appearance being duly ferved; the judge shall in a summary way examine into the matter of the petition, and administer the oath to the prisoner, and make fuch order in the premisses as to him shall seem meet, and proceed in manner as aforefaid concerning the prifoner's discharge, and give the same judgment, relief, and directions relating thereunto, as any court out of which the process shall issue is herein before directed to do; And the order of the faid judge shall stand good, and be entred upon record in fuch affizes; and a copy thereof (figned by the judge) shall be transmitted to the court from whence the execution issued, to be there also entred upon record.

How compellable to deliver up.

7. By the faid act of 32 G. 2. c. 28. If any prisoner who shall be charged in execution, for any debt or damages not exceeding 1001. belides costs of fuit, shall not within three months next after his commitment make fatisfaction to his creditors who charged him in execution; any fuch creditor or creditors may require him, on giving 20 days notice to him in writing that they design to compel him to give in to the court from which the process issued, or into the court in the prison whereof he shall be removed by habeas corpus, or shall remain or be charged in execution, within the first seven days of the term next after the expiration of the faid 20 days, in respect to any prisoner charged in any prison belonging to the courts at Westminster; and at the second court which shall be held by any fuch other court of record after the expiration of the faid 20 days, in respect to any prisoner charged in any prison belonging to such other court; and where such prifoner shall be charged in execution in any county gaol or other prison above 20 miles distant from Westminster hall or from the court out of which the process issued, then to give in upon oath at the affizes or great fessions respectively, and on the crown fide thereof, which shall be held for fuch place next after the expiration of fuch 20 days from the time of giving notice as aforesaid, a true account in writing, to be figned by him, of all his real and personal estate, and of all incumbrances affecting the

fame, to the best of his knowledge and belief, in order that the estate and effects of such prisoner may be devested out of him, and ordered by the court to be affigned and conveyed for the benefit of fuch his creditors. And every fuch creditor, requiring fuch prisoner to be brought up as aforesaid, shall also give 20 days like notice in writing of his intention to require such prisoner to be brought up, to every other creditor at whose suit such prisoner shall be detained or charged in custody in such gaol, if they can be found; and if not, then to the feveral attornies last employed: and shall also give a like notice in writing to the sheriff or gaoler of such his intention to have such prisoner brought up, and to require fuch theriff or gaoler to bring him up accordingly, 20 days at least before the time appointed for him to be brought up. And thereupon such sheriff or gaoler shall, at the costs of such creditor, cause such prisoner to be brought to fuch court as by the notice is required, together with a copy of the cause or causes of his detainer: and if fuch theriff or gaoler, on fuch notice given to him as aforesaid, and tender made to him by such creditor of reasonable charges not exceeding 1 s. a mile, shall neglect or refuse to bring him up as aforesaid; he shall forfeit 201. to the party grieved, with treble costs. And the prisoner so brought up, shall, on proof of such notices being given as aforefaid, deliver in there in open court, upon oath, a full true and just account, disclosure, and discovery in writing, of the whole of his real and personal estate, and of all books, papers, writings, and securities relating thereto, and also of all incumbrances then affecting the fame, and the respective times when made, to the best of his knowledge and belief (except the necessary wearing apparel and bedding of him and his family, and the necessary tools or infruments of his trade or calling, not exceeding the value of 101. in the whole): which account shall be subscribed by him. And on delivering in of fuch account, the estate and effects of such prisoner shall be affigned and conveyed by him, by a short indorsement on the back of the faid account, to fuch persons as the court shall direct, in trust and for the benefit of the creditors who shall have required such prisoner to be brought up, and of such other creditors (if any there be) at whose suit such prisoner shall be charged in custody or in execution in any fuch gaol, and who shall, by any memorandum or writing figned by them before fuch affignment made, consent to such prisoner's being discharged, and to accept a proportionable dividend of such prifoner's effects; and if there be no other fuch creditor, or being fuch, if fuch creditors shall not agree in writing to discharge such prisoner and to accept such dividend, then in trust for the creditors only who shall require such prifoner to be brought up. And by fuch affignment and conveyance, all the prisoner's estate and effects shall be vested in the creditors to whom the same shall be affigned in trust as aforesaid. And upon such discovery, assignment, and conveyance being made, the court shall discharge the prisoner in the actions and charges of every such creditor, who required the prisoner to be brought up, or who figned fuch confent as aforefaid; on paying 2s. 6d. discharge fee, and no more, to the officers of the court. And no ftamp thall be necessary on such assignment, or on any rule or order for fuch discharge. - But all the future effects of fuch prisoner (except the necessary wearing apparel of him and his family, and the necessary tools or instruments of his trade or calling) shall be liable to satisfy his debts, if the same shall not be fully paid from his estate so assigned as aforefaid; and no advantage in any fuit shall be taken by him, for that the cause of action did not accrue within fix years next before the commencement of fuch fuit, unless he was intitled to take such advantage before he stood charged in custody by virtue of the original suit or action. -And if he shall neglect or refuse to deliver in and subscribe such account as aforesaid, within the time herein before appointed, or within 60 days then next following, without making appear some just excuse to be allowed of by the court; or shall refuse to assign or convey his estate and effects according to the order of fuch court; he shall, on conviction upon indictment, be transported for 7 years: And if he shall deliver in a false account, or designedly conceal and not infert in the account any books, papers, fecurities, or writings relating to his estate and effects, with intent to defraud his creditors, and shall be thereof convicted on indictment, he shall suffer as for wilful perjury. f. 16, 17.

Affignees may compound.

8. By the faid act of 32 G. 2. c. 28. the affignees may compound with any debtors or accountants to fuch prifoner, and take fuch reasonable part of any debt due, as can upon fuch composition be gotten; and also may submit matters to arbitration, relating to the prisoner's estate and effects, which shall be binding to all the par-

ties. J. 21.

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And where mutual credit hath been given between the prisoner and any other, before the delivery of the schedule; the affignees may state and allow the account between

them, and receive the balance. J. 23.

9. And it shall be lawful for the respective courts at Misbehaviour in Westminster from whence the process issued; or where the assignees. the prisoner shall have been charged in execution by process issued out of any other court, it shall be lawful for the judges of the courts of king's bench, common pleas, and exchequer, or any of them, from time to time, on the petition of any creditor who had charged fuch prisoner in execution, or of fuch prisoner, complaining of any infusficiency, fraud, milmanagement, or other milbehaviour of any affignee, to order the parties to attend thereon; and upon hearing, they shall make such order, either for the removal of such affignee and appointing a new one, or for the just management of the effects, as to them shall seem meet. f. 22.

10. If the effects affigned shall not fatisfy the whole debt, Gaoler to have and the gaoler's fees; the gaoler shall receive only a pro-onlyhis dividend.

portionable dividend with the other creditors. f. 19. II. A prisoner discharged shall never after be arrested Prisoner disor liable to action for the fame debt, unless convicted of be again arrefted.

perjury. f. 20.

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12. But nevertheless, the judgment against him shall But his effects continue in force, and execution thereon may be had at shall be liable. any time against his lands and goods, other than his necesfary wearing apparel and bedding for himfelf and family, and the necessary tools of his trade or occupation not exceeding 101. value in the whole. f. 20. and and and

13. If any person who shall take any oath as by this act Persons guilty of required to be taken, shall, upon any indictment for per- perjury. jury be convicted by confession or verdict; he shall suffer as for wilful perjury; and shall also be liable to be taken on any process de novo, and shall never after have the benefit of this act. f. 18.

14. No person who shall have taken the benefit of Persons not reany act for the relief of infolvent debtors, shall have lievable having any benefit under this act; nor shall be deemed within of any former the meaning of it, so as to gain any discharge, unless act. compelled by any creditor to deliver up his estate and effects. J. 24. and after the proposed of their reflect that one of

XI. Concerning

XI. Concerning the prisons of the king's bench and

The justices in Easter sessions shall set down what fums shall be fent out of every county or place corporate, for the relief of the poor prisoners of the king's bench and marshalfea, so as there be sent out of every county yearly 20s. at the leaft to each of the faid prifons; to be paid by the high constables out of the general county rate, to two fuch treasurers or one of them, as by the more part of the justices of the county shall be elected to be treasurers: which treasurers, on the first day of Trinity term yearly, shall pay over the same to the lord chief justice of England, and knight marshal, or to whom they fhall appoint, taking their acquittance for the same, or in default of the chief justice, to the next most antient justice of the king's bench, equally to be divided between the priloners of the king's bench and mar-Shalfea prisons. 43 El. c. 2. f. 12, 13, 14. 11 G. 2. c. 20. f. I. 12 G. 2. c. 29.

And if the treasurer shall neglect or refuse, the king's bench may make a rule on him, requiring him to pay the same; and obedience to such rule may be inforced as other rules of the said court, at the costs and charges of the trea-

furer. 11 G. 2. c. 20. f. 2, 4.

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And that the treasurer may be the better amenable to the faid court, he shall within 30 days after his election or appointment, under the like penalty, transmit his name and place of abode to the clerk of the crown in the king's bench, to be entered by him; for which entry no fee shall be paid. f. 3.

Gauger. See Excile.

Gin. See Excile.

Glass. See Excile.

Good behaviour. See Surety.

Goss. Burning of it in forests. See Burning.

Grand larceny. See Larceny.

Greyhound. See Same.

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Gunpowder.

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Gunpowder.

NO TROUBLE MANAGEMENT

1. BY an act made in the 16 C. 1. c. 21. (to wit, in Who may make 1640, being the last statute of force in that king's gunpowder. reign) All subjects may make and sell gunpowder, and bring into the kingdom falt petre, brimstone or any other

materials for the making of it.

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And by a statute made in the first year of the reign of king James the 2d, (which is also somewhat remarkable) it is enacted, that if any person shall obtain a grant for the fole making or importing of gunpowder, he shall incur a præmunire. 1 7. 2. c. 8. s. 3.

2. By the 5 G. 2. c. 20. No mafter of any vessel out-Shipping or landward bound, shall receive on board any gunpowder, ei- ing of gunpowther as merchandize or store for the voyage (except for guns on the his majesty's service) on the Thames above Blackwall; on Thames above pain of 51. for every 501. weight, and fo in proportion. Blackwall.

1. 2. And the master of every vessel coming into the Thames, shall land all the powder on board, either before arrival at Blackwall, or within 24 hours (if the weather will permit) after he comes to anchor there, or at the place of unloading; on pain of 51, for every roolb. weight. 1. 3.

And if any officer of any ship (except the king's) shall between London bridge and Blackwall, keep any gun loaded with ball, or fire any gun on board above Blackevall, before funrifing or after funfetting; he shall forfeit for fuch gun loaded 5 s. and for fuch gun fired 10 s. f. 4.

And the corporation of Trinity house at Deptford Arond. may appoint a person to inspect vessels; and if any such officer obstruct him, he shall forfeit 51. f. 5.

And the penalties shall go to the poor of the corpo-

ration. f. 6.

And two justices of London, or the respective counties where the offence shall be committed, shall on complaint in ten days fummon the offender, or after oath made of the offence may iffue their warrant for apprehending him, and on appearance or contempt may convict him either by oath of witnesses, or confession, or his own view, and levy the penalty by diffress, and if not redeemed in five days, by fale; for want of diffress, he shall be imprisoned

for three months, or till paid: and persons aggrieved may

appeal to the next sessions. f. 7.

Keeping gunpowder in London.

3. No person, not being a dealer in gunpowder, shall keep more than 50lb. or being a dealer, not more than 200 lb. lenger than 24 hours, at any time in any house or place, or in any houses or other places, either under the fame roof, or by dividing the fame, and disposing thereof under different roofs, or in any yard or yards, within London and Westminster, or the suburbs thereof, or within three miles of the tower, or of St. James's; or within two miles of any magazine now erected (that is in the year 1718,) for keeping gunpowder, belonging to the king for the use of the publick; or on the Thames, except in vessels passing or detained by tides or bad weather (except carts and other carriages loading or unloading, or passing on the highway): on pain of forfeiting the fame, and the value thereof, with full costs, to him who shall sue in any court of record at Westminster in 30 days. 5 G. c. 26. f. 1. 11 G. c. 23. f. 1. 15 & 16 G. 2. c. 32. f. 1.

And any justice of the peace within the said limits, on demand by any inhabitants shewing a reasonable cause, may issue his warrant to search in the day time, for dangerous quantities of gunpowder, and break open any places if there be occasion, and the searchers may seize, and may remove the same in 12 hours out of the said limits, and detain the same till it be determined in the courts whether it be forseited or not. 15 & 16 G. 2.

c. 72.0 f. 2. of lowers and or to the rent sequence

Persons permitting others to keep it. 4. And persons permitting others to keep gunpowder in any places not belonging to the owners of such gunpowder, shall forseit 1s. a pound. 15 & 16 G. 2.

Carrying gunpowder in the ffreets of Lon-

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5. No person shall carry in the streets of London or Westminster, or the suburbs thereof, more than 20 hundred
weight of gunpowder at one time; and all gunpowder
carried in the said streets in any carts or carriages, shall
be carried in covered carts or carriages, and the barrels
close jointed and hooped, and put into cases of leather or
canvas; and gunpowder carried by man or horse, shall
be put into cases of leather or canvas, and entirely covered therewith: and if any shall be carried otherwise, it
shall be forseited, and may be seized by any person to his
own use, the offender being thereof convicted before two
justices. 5 G. c. 26. s. 4.

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6. By

6. By the 22 G. 2. c. 38. No person shall keep gun- Keeping gunpowder for more than 24 hours at any one time, in greater where, quantity than 400 lb. weight, in any house or other place, in any city or the fuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any the king's magazines; nor shall keep for more than 24 hours at any

time, a greater quantity than 3000 lb. weight in any house or other place. 22 G. 2. c. 38. f. 1.

And any two justices, on demand made, and a reasonable cause assigned, by any parish officer or two householders inhabiting where it is kept, shall iffue their warrant for fearthing in the day time any house, shop, or other place, and breaking open the doors thereof, if there be occasion; and if upon such search, more than 400lb. weight, or 3000 lb. weight respectively as above shall be found, all exceeding the faid quantities shall be seized, and detained, and forfeited to any person who shall sue in three months in any court at Westminster; which court shall give judgment for recovery of the same or the value thereof with full costs. f. 2. 1 to apittal one ba A.

But no penalty shall be incurred on account of a greater quantity than 30 hundred weight kept within any warehouse or magazine already built for that purpose (that is, in 1749,) unless the justices at their quarter sessions shall on complaint by two inhabitants near, adjudge the fame to be dangerous, and until fix months after such adjudication; and provided the fame be not fituate in any city or the fuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any of the king's maga-

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compowder, thall forfeit a stack 7. And it feems that erecting powder mills, or keeping Erecting powder powder magazines near a town, is a nusance, for which mills, a nusance. an indictment or information will lie. For in the case of K. and Williams, E. 12 W. there was an indictment against Roger Williams, for keeping 400 barrels of powder near the town of Bradford, and he was convicted accordingly. And in K. and Taylor, T. 15 G. 2. The court granted an information against the defendant as for a nufance, on affidavits of his keeping great quantities of gunpowder near Maldon in Surry, to the indangering the church and houses where he lived. Str. 1167 d It might as well have been faid, to the indangering the lives of his majesty's subjects. offices in c. the same of the

Carrying gunpowder elfewhere than in London,

8. No person shall convey at any one time, in any waggon or other carriage, a greater quantity than 2500 pounds weight; or more than 5000 pounds weight in any open vessel on any river, within one mile of any city or market town: And all such gunpowder shall be carried in covered carts and carriages; and the barrels shall be close joined and hooped, and secured that no part thereof be scattered in the passage; on pain of being seized and forseited to the informer, on proof of the offence before two justices. 22 G. 2. c. 38. f. 3.

Exception.

9. But none of the faid acts shall extend to any magazine belonging to the crown; or to hinder the trying of gunpowder by his majesty's officers; or to the carrying of gunpowder to and from the king's magazines; or with forces in their march. 5 G. c. 26. f. 5. 11 G. c. 23. f. 4. 15 & 16 G. 2. c. 32. f. 6. 22 G. 2. c. 38. f. 5.

Seffions to appoint places for warehouses.

10. The justices in sessions shall, on application to them made, appoint convenient plots of ground, two miles diftant from any city or market town, not exceeding two acres, with the use of convenient roads leading thereto, for erecting warehouses for keeping gunpowder in any quantity, first agreeing with the proprietor; and if they cannot agree, the said justices shall issue their warrant to the theriff to impanel and return a jury, who shall on oath (to be administred by the faid justices) inquire into the value of the ground, with the use of convenient roads leading thereto: And all fuch verdicts and inquisitions shall be kept with the records of the sessions, and be conclusive to all parties: And the faid justices may send for persons interested, and examine the parties and witnesses on oath: And the fum to be affeffed as aforefaid, not exceeding 30 years purchase, shall be paid to the proprietor; and on fuch payment, or in case of refusal to accept it, on leaving it with the faid justices for the proprietor, the inheritance of the grounds, and use of the roads leading thereto, shall be vested in the purchasers and their assigns, for the purposes aforesaid, and not otherwise; And the warehouses to be built thereon, shall be built in such manner, as will most effectually render them safe and secure. 22 G. 2. c. 38. f. 6.

Working with hammers in warehouses,

hammer plaited with iron or steel, in any warehouse or place while any gunpowder is there; he shall on conviction within one month, by the oath of one witness, before one justice, forfeit 20s. to the informer; to be levied by distress by warrant of such justice; for want of

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fufficient diffress, to be committed to the house of correction, to be kept to hard labour not exceeding one month, nor less than 14 days. 11 G. c. 23. f. 3.

12. Every person imployed in any storehouse where Doing any thing gunpowder is kept, or in carrying gunpowder from one to indanger the place to another, being convicted before one justice, of wilfully committing any act, whereby fuch gunpowder may be in danger of taking fire, shall forfeit 51. to the informer, for every 100 pounds weight of gunpowder contained in fuch storehouse, or which he shall be imployed in conveying; and on non-payment thereof, shall be committed to the publick gaol, without bail, not exceeding fix months. 22 G. 2. c. 38. f. 4.

Guns. See Same.

Habeas Corpus. See Bail.

Hackney coaches and chairs.

For the duty on coaches, see title Ercife.

1. THE king may appoint persons not exceeding five, commissioners, to be commissioners for regulating hackney coaches within the bills of mortality. 9 An. c. 23. f. 1.

2. Which commissioners shall under hand and seal li-Licensing. cense hackney coaches within the bills, not exceeding 800; and on every licence shall be reserved 5 s. a week,

to be paid monthly. 9 An. c. 23. f. 2. And they shall also license hackney chairs within the

bills aforefaid, not exceeding 400; referving a rent of 10 s. a year, to be paid quarterly. 9 An. c. 23. f. 3. 10 An. c. 19. f. 158. 12 G. c. 12. f. 15.

3. Every coach and chair shall have a distinct mark on Mark. each fide; and if any shall alter such mark, he shall forfeit 51. half to the informer, and half to the king. 9 An. c. 23. 1. 4.

4. No horse to be used with any hackney coach, shall be Size of the under 14 hands high. 9 An. c. 23. f. 4. horses. to make by warrant of facility for want of S. No.

hackney coaches and chairs.

Penalty of driving without licence.

Rates.

5. No person shall drive or let to hire any hackney coach without licence; on pain of 51, nor shall carry any person for hire in a hackney chair, without licence; on pain of 40 s. in like manner. 9 An. c. 23. f. 4.

And by the 1 G. A. 2. c. 57. No unlicensed person shall ply with any coach or hearse, or shall let to hire any mourning coach, within the bills aforesaid, on pain of

51. as for driving unlicensed. f. 3.

And if any person shall drive a mourning coach to a funeral, not having a number on it, or except it be a coach attending the master or some of his family; on information given to the commissioners, they may summon the driver, and unless he prove an order from the master to attend at the suneral, the driver or the undertaker shall

forfeit 5 l. f. 4.

6. And the coachman shall not take above the rate of 10s. a day, reckoning 12 hours to the day; and by the hour, not above 18 d. for the first hour; and 12 d. for every hour after: And no person shall pay from any of the inns of court or thereabouts to any part of St. James's or the city of Westminster (except beyond Tuttle-street) above 12 d. and the same prices from the same places to the inns of court or thereabouts; and from the inns of court or thereabouts, to the Royal Exchange 12 d. and if to the Tower, or Bishopsyate-street, or Aldgate, or thereabouts 18 d. and so from the said places to the said inns of court as aforesaid: and the like rates from and to any place, at the like distance, within the places beforementioned. 9 An. c. 23. s.

And no person shall be obliged to pay above 12 d. for a coach for any distance (not above specified) not exceeding one mile and four furlongs; nor above 1 s. 6 d. for any distance above a mile and four furlongs, and not exceeding two miles: And no chairman shall take more than the rate for any hackney coach driven two thirds of the

fame distance; on pain of 40 s. f. 7, 8.

7. And the commissioners may make by-laws, to bind all persons licensed, and the renters of such licences, and the drivers. 9 An. c. 23. f. 16. 1 G. st. 2. c. 57. f. 1.

The same to be approved by the lord chancellor, commissioners of the great seal, two chief justices, and chief

baron, or three of them. 9 An. c. 23. f. 17.

Driver exacting.

By-laws.

8. And if any hackney coachman shall refuse to go at, or exact more for his hire, than according to the above act, or by-laws; he shall forfeit a sum not exceeding 31. nor under 10 s. 1 G. A. 2. c. 57. f. 2.

9. And if any person who shall drive a coach, or carry Misselaving, a chair for hire, acting under a person licensed, shall be guilty of misselaviour, by demanding more than his fare, or giving abusive language, or other rude behaviour; he shall, on conviction on oath, forfeit not exceeding 20 s. to the poor; and if he shall not be able, or resuse to pay, he shall be committed to Bridewell or some other house of correction, to be kept to hard labour seven days, and receive the publick correction of the house before he be discharged. 9 An. c. 23. f. 49.

And on misbehaviour of a coachman by abusive language, or otherwise, the commissioners may revoke his

licence. f. 19.

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10. And if any person shall refuse to pay, or shall de-Persons resusing face any coach or chair, any justice may grant his war-to pay; rant to bring him before him; and on proof upon oath may award satisfaction to the party, and on resusal to pay, may bind him over to the next sessions, who may determine the same. 9 An. c. 23. s. 22.

11. The rents and penalties to be levied by diffres, by Power of the warrant of three commissioners; which distress shall be justices. fold in ten days, returning the overplus, charges of the distress and of the warrant being first deducted (if on seven days notice they pay not the fine without such warrant); and in default of distress, to be imprisoned till paid; and if any rent shall be unpaid for 14 days, the commissioners may withdraw the licence. 9 An. c. 23. s. 12.

And moreover, the breach of the by-laws, and of these rules and orders, may be punished by any justice of the peace, mayor, bailist, or other magistrate, where the offence shall be committed, in like manner as by the commissioners. 9 An. c. 23. f. 17. I G. st. 2. c. 57. st. 7.

4 G. 3. c. 36.

Note; the clause in the act of the 12 G. c. 12. above-mentioned, was only to continue for 18 years; but by the 16 G. 2. c. 26. it was continued to June 24, 1760, &c. and by the 33 G. 2. c. 25. is further continued during such time as any former act relating to the licensing of hackney coaches or chairs, or any part thereof, shall be in force:

Which acts, as to the time of their continuance, feem to stand thus: The 9 An. c. 23. so far as it relates to this subject, was made to continue for 32 years; and the 10 An. c. 19. so far as it relates to this subject, was made to continue for 31 years; the 1 G. A. 2. c. 57. which explains and amends the 9 An. c. 23. doth consequently attend

tend the fate of the same act of the 9 An. Now the 3 G. c. 7. f. 1. made the faid duties perpetual (fubject to redemption by parliament), and perpetuated in like manner all the clauses in the said acts for the recovery of the said duties. The 16 G. 2. c. 26. (by mistake, as it seemeth) recites the faid act as temporary only, and continues them along with the faid act of the 12 G. to June 24, 1760, &c. And the 33 G. 2. c. 25. reciting the duties as perpetual (fubject to redemption by parliament as aforefaid) feemeth to suppose, that nevertheless the clauses in the faid acts for the recovery of the faid duties are only temporary and near expiring; and therefore enacteth, that the several clauses in the said acts, relating to the power of the commissioners and justices for the recovery of the faid duties, shall be in force during such time, as any other part of the faid acts relating to the licensing of hackney coaches or chairs shall be in force (that is, as it feemeth, until the faid duties shall be redeemed by parliament).

Harbour filling up. See Rivers and Mavi-

Hares. See Game. Harepipes. See Game. Harvest. See Game.

hawkers and pedlars.

Licence duty.

1. THERE shall be paid by every hawker, pedlar, petty chapman, or any other trading person going from town to town, or to other mens houses, and travelling either on soot, or with horse, horses, or otherwise (except as herein after excepted), carrying to fell, or exposing to sale any goods, wares, or merchandizes, a duty of 41. for each year. And every person so travelling with a horse, as, mule, or other beast bearing or drawing burden, shall pay 41. for each year he shall so travel with, over and above the said first mentioned duty of 41. 9 & 10 W. c. 27. s. 1.

Trading person going from town to town T. 31 G. 2.

Rex v. Little. The conviction, being removed by certiorari, did set forth, that one Thomas Presson, gentleman,
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came before the justice and informed him, that the defendant Thomas Little, in the parish of St. Mary in the city and county of the city of Litchfield, was found offering to fale filk handkerchiefs, and trading as an hawker, pedlar, or petty chapman; and that the faid Thomas Litthe did not, altho' required fo to do, produce any licence as the law in that case directs: That the said Thomas Little, being brought before the justice doth confess, that he the said Thomas Little did offer to sell filk handkerchiefs to the faid Thomas Preston, in such manner as is mentioned in the aforesaid information; and that he had no licence for felling thereof: Whereupon the justice doth adjudge, that the faid Thomas Little is an hawker within the true intent and meaning of the statute in that case made, and is guilty of the offence in the faid information laid to his charge. It was moved to quash this conviction, upon two exceptions, 1. With respect to the person; that he is not brought within the description of the acts, as going from town to town, and travelling on foot, or with horse, horses, or otherwise: but he is only generally described to be a person that traded as an hawker and pedlar, and offered to fell a parcel of filk handkerchiefs to the informer. 2. With respect to the offence; the evidence is the defendant's own confession; and the confesfion extends no further than barely to the simple fact of offering to fale filk hankerchiefs in fuch manner as is charged upon him. --- By lord Mansfield Ch. J. A fingle act of felling a parcel of filk handkerchiefs to a particular person, is not a proof that he was such a hawker, pedlar, or petty chapman, as ought to take out a licence, by virtue of the acts of parliament. It is certainly of the effence of the crime of not producing a licence, that he must be such a person as ought to take out a licence. And the confessing is only of the fact, that he offered to fell the handkerchiefs to Thomas Preston, not that he traded as an hawker. Convictions ought to be taken strictly; and it is reasonable that they should be so, because they must be taken to be true against the defendant. I do not fay, that it is necessary to define exactly, what a hawker, pedlar, or petty chapman is. But it is necessary to alledge and shew that he fold the goods, or traded as one .-Mr justice Denison concurred, for the same reasons; and thought the material averment to be here wanting; it not being averred that he was fuch a hawker, pedlar, or petty chapman, as ought to take out a licence. - By Mr justice Wilmot (Mr justice Foster being absent): I am clearly of the fame opinion. For certainly a man may fell goods as a hawker, pedlar, or petty chapman, without being such a person as is obliged to take out a licence. And if he is not obliged to take out a licence, most undoubtedly he ought not to be convicted in a penalty for not producing one. Now here, it appears to me, that the justice hath convicted the man of an offence, of which he hath not proved him to be guilty.—And by the court unanimously, the conviction was quashed. Burrow, 609.

For each year he shall so travel with The sense is here manifestly imperfect. The intention of the act undoubtedly was to express, that over and above the first duty of 41. a further duty of 41. should be paid for every horse, als, mule, or other beaft: Otherwise a man may carry in a waggon as many goods as would furnish a large shop, for the same duty as he may carry one horse load. And fo he may, as the act now stands. Thus in the case of K. and Robotham, H. 3 G. 3. On a conviction upon this act being removed into the king's bench by certiorari, exception was taken, that the conviction was, for not having a licence to produce for each herfe he travelled with, although it appeared that he had a regular licence to travel with an horse; which licence justified his travelling with one or more: For the words of the act are, that he shall pay the faid additional duty for each year he shall so travel with, and not for each horse or other beast of burden. And the conviction was quashed.—And the mistake is no other than this: By the 8 & 9 W. c. 25. Every pedlar or other fuch person travelling as aforesaid was to pay (for that year only) a duty of 41. and a further additional duty of 41. for each horse, ass, or mule, or other beast bearing or drawing burden, he or she should so travel with. This ftatute of the 9 & 10 W. c. 27. re-enacts the same for three years (and the faid duties afterwards were made perpetual); only in this latter act, the words in the transcript have been dropped, which are necessary to compleat the fense, and to answer the intention of the legislature; for, evidently, the fentence ought to have run thus,the fum of 41: for each year, for each horse, ass, or mule, or other beaft bearing or drawing burden, he or she shall so travel with.

Payment of the duty.

2. And every such person, on receiving his licence, shall pay to whom the commissioners of the treasury, or three of them, shall appoint for licensers, or their deputy, half the duty, and give security by bond, with one

or more furefies, to the king, for payment of the other half at the end of fix kalendar months, unless he shall chuse to pay down the other half, in which case he shall be allowed after 2s. in the pound for prompt payment. 9 8 10 W. c. 27. f. 2.

3. And the commissioners for these duties, or two of Granting the them, shall (on the receipt and security given as aforesaid) licence. grant licences to be by them subscribed; for which shall be taken only 1 s. unless such person travel with a horse or beaft, and in that case shall be paid only 2 s. above

the duties. 9 & 10 W. c. 27. f. 4.

4. And if any fuch person be found trading as afore- Trading without faid, without, or contrary to fuch licence; or if on de- a licence, or remand made by any justice of the peace, mayor, confta-fuling to shew it. ble, or other peace officer of any town corporate or borough, where he shall so trade, shall not have his licence ready to be produced; he shall forfeit 121. half to the informer, and half to the poor of the parish wherein the offender shall be discovered; and for nonpayment thereof, shall suffer as a common vagrant, and be committed to the house of correction. 9 & 10 W. c. 27. s. 3. 4 An. c. 4. f. 4.

He shall forfeit 12 l.] M. 5 G. K. and Beck. Although the statute here mentions nothing of conviction, yet nevertheless there ought to be a formal conviction; and a cer-

tiorari will lie for the removal of it. Str. 127.

And if any constable or other officer aforefaid, shall refuse or neglect, upon due notice, or his own view, to be aiding in the execution hereof, being thereunto required, and be thereof convicted on oath of one witness before one justice where the offence shall be committed; he shall forfeit 40s. by diffress and sale by warrant of such justice, half to the poor, and half to the profecutor. 9 & 10 W.

c. 27. J. 7.

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And any person may seize and detain any such hawker, pedlar, petty chapman, or other trading person, till he produce his licence if he have any, or if he be found trading without a licence, for fuch reasonable time as he may give notice to the constable, churchwarden, overseer, or fome other parish officer, who shall carry such person so -feized before a justice; who shall, either on confession, or proof by witness upon oath, convict the offender, and by his warrant cause the sum of 12 l. to be forthwith levied by distress and sale of the offender's goods, wares, or merchandizes. 9 & 10 W. c. 27. f. 8.

hawkers and pedlars.

Lending licences.

5. If any person shall lend or let out to hire his licence, he and also the person trading under colour thereof, shall forfeit each 401. half to the king, and half to him that shall sue in any court of record. 3 & 4 An.

Counterfeiting

Exceptions.

6. If any person shall forge or counterfeit, or travel with a forged or counterfeited licence; he shall forseit 50 l. half to the king, and half to him that shall sue in the courts at Westminster, and shall also be liable to be

punished for forgery. 9 & 10 W. c. 27. f. 5.

7. But nothing herein shall prohibit any person from selling acts of parliament, forms of prayer, proclamations, gazettes, licensed almanacks, or other printed papers licensed by authority; or any fish, fruits, or victuals; nor to hinder any person who is the real worker or maker of any goods or wares, or his children, apprentices, servants, or agents, from carrying abroad, exposing to sale, or selling any of the said goods and wares of his own making, in any publick fair, market, or essewhere; nor any tinker, cooper, glazier, plummer, harness mender, or other person usually trading in mending kettles, tubs, houshold goods, or harness, from going about and carrying with him proper materials for mending the same.

Also persons trading in the woollen and linen manufactures, and selling the same by wholesale, shall not be deemed hawkers, pedlars, or petty chapmen. 3 & 4 An.

c. 4. 1. 14.

Also no maker or wholesale trader in English bone lace, shall be deemed a hawker, pedlar, or petty chapman. 4 G. c. 6.

Also nothing herein shall extend to hinder any person from selling any goods in any publick fair or market.

9 & 10 W. c. 27. f. 12.

And nothing herein shall give any power for the licenfing of such persons to sell any goods in cities, boroughs, towns corporate, or market towns, otherwise than they might have done before. 9 & 10 W. c. 27. s. 15.

8. Persons sued for any thing done herein, may plead the general issue, and have treble costs. 9 & 10 W.

c. 27. f. 6.

Hawks and hawking. See Game.

Treble cofts.

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THE 2 W. feff. 2. c. 8. and 8 & 9 W. e. 17. and 31 G. 2. c. 40. do contain regulations concerning the felling of hay, straw, and cattle within the bills of mortality, which are not general enough to be here inserted at large.

Hays. See Game.

Heath. See Game.

Hedge breaking. See Clood.

Demp.

I T shall not be lawful to any person to water any hemp or flax, in any river, running water, stream, brook, or other common pond, where beasts used to be watered; on pain that every person offending shall forfeit 20 s. half to the king, and half to the party grieved, or any other who shall sue in any court of record, leet, or law day. 33 H. 8. c. 17.

Herring fichery.

I F any person shall damnify and destroy, without consent of the society of the free British sishery, any of the nets, sails, cordage, stores, or other materials, belonging to the said society; he shall, on conviction on the oath of one witness before one justice, forfeit to the society treble value, by distress; and for want of sufficient distress, to be committed to the house of correction to hard labour for any time not exceeding three months, or till satisfaction be made. Prosecution to be in six kalendar months. 28 G. 2. c. 14. s. 9.

High Constable. See Constable. High treason. See Creason.

Digh.

Dighways.

OTE; Bridges repaired by the parish or township, and which consequently come under the cognizance of the surveyor of the highways are comprehended under this title: County bridges are treated of under title Bridges.

For the ordering of streets in cities and market towns,

fee title Sravengers.

Most of the books are remarkably confused under this title; occasioned by a multiplicity of statutes, standing unrepealed, and yet altered perhaps five or fix times, or oftner, by succeeding statutes. In order to extricate the subject out of which perplexity, I have endeavoured to make the heads of this title less general, selecting the law relating to each distinct article by itself.

But before I descend to particulars, it is proper to premise a clause in the statute of the 24 G. 2. c. 43. which makes a great alteration in the law relating to this whole

title; and is as follows:

Whereas several acts have been made, as well for repairing and amending divers publick roads, as for punishing offences done or committed upon or to the highways, the good intentions whereof have not been answered, for want of due execution of the said laws; for remedy, and as a further encouragement to informers, All penalties and forfeitures imposed by this or any former act, shall be wholly given to, and vefted in the informer of person who shall fue for the same, who may sue for and recover the same in the same manner as they are directed to be sued for and recovered by the faid flatutes respectively; or otherwise by action at law, in any of the courts of record at Westminfler, in manner following, viz. Where any person shall be liable to a pecuniary penalty, the same may be fued for by action of debt, in which it will be fufficient to declare, that the defendant is indebted to the plaintiff in the fum of-being forfeited by an act intitled-And where the forfeiture is of any horse, or other goods, by an action of trover, in which the value of fuch horse or other goods liable to the forfeiture shall be given in damages, without any feizure or demand thereof: And the plaintiff, if he recovers shall have double costs. Provided, there shall not be nore than one recovery for the same offence, and that no action be brought by virtue of this act, in any of the faid courts, unless it be brought before the end of fix kalendar months, after the offence com-

mitted. f. 11.

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Which statute, nevertheless, doth not seem to extend to all offences whatsoever relating to the highways, but must be restrained according to the recital in the preamble. The words [divers publick roads] cannot mean all roads whatsoever, but seem to intend turnpike roads particularly. And the words [offences done or committed upon or to the highways] seem to intend offences by which the road is actually made worse, or the free passage hindred or obstructed; as by too great a number of horses or other cattle in carriages, laying stones, straw, timber or the like, in the highway; and not the penalties for neglect of duty, or for not performing the fix days labour, or such like.

This being premised, I shall reduce the other laws con-

cerning highways, under the following heads:

I. What is a Highway.

II. Concerning the special sessions for the highways.

III. Appointment of the surveyor.

IV. Surveyor's general duty on acceptance of bis office.

V. Who shall repair.

VI. The proportion of labourers and carriages.

VII. Providing materials.

VIII. Concerning the fix days work.

1X. Of annoyances in general.

X. Ditches adjoining to the highway.

XI. Water in the highway.

XII. Hedges adjoining to the bigbway.

XIII. Wood growing in the bighway.

XIV. Straw, dung, stones, timber laid in the big bway.

XV. Empty carriages left in the highway.

XVI. Gate erested across the bigbway.

XVII. Nusance by an unlawful number of borses or beasts in carriages.

Dighways.

and XVIII. Nufance by unlawful breadth and tire

XIX. Nusance of riding upon carriages, or the

XX. Pulling up blocks in the bigbway.

XXI. Concerning guide posts.

XXII. Breadth and widening of highways.

XXIII. Lands given to repairing bigbways.

XXIV. Affeffment for the repair of bigbways.

XXV. In what case the whole parish shall be contributory.

XXVI. Further provision for the same by the com-

XXVII. Presentment or indictment of the highways in general.

XXVIII. Presentment by a justice on his own view.

XXIX. Power of the leet to punish offences.

XXX. Fines and the disposal thereof.

XXXI. Surveyor's account.

XXXII. Appeal.

XXXIII. Certiorari.

XXXIV. Turnpikes.

I. What is a bigbway

Three kinds of highways.

1. There are three kinds of ways; 1. A foot way2. A foot and horse way, which is also a pack or drift way.

3. A foot, horse, and cart way. I Infl. 56.

2. It feemeth that any one of the said ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is also a thoroughfare to other towns, may properly be called a highway. I Haw.

For there were highways before there were market towns. And if it were effential to the constituting of a highway, that it should expresly lead from market town to market town; then it would follow, that the lord of a market, by forfeiting or surrendring his charter, might cause that to cease to be a highway, which was a highway before;

Difference between a highway and a private way. before; or the king, by granting a market in any place where there was no market before, might thereby confequentially change the way to it from a private way into

a highway.

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And therefore, the distinction which is taken in some books, concerning this matter, feems to be very reasonable; that every way from town to town may be called a highway, because it is common to all the king's subjects; and confequently that a nusance therein is a common nufance, and punishable by indictment: but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of fuch parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons. each of which, as it feems, may have an action on the case for a nusance therein. 1 Haw. 201.

So if I have a private way without a gate, and a gate is hung up; an action lies upon the case, for I have not my

way as I had before. Litt. R. 267.

So if one grants me a way, and afterwards digs trenches in it to my hindrance; I may fill them up again. Godb.

But if a way which a man has, becomes not passable, or becomes very bad, by the owner of the land tearing it up with his carts, and so the same be filled with water; yet he who has the way cannot dig the ground to let out the water, for he has no interest in the soil. Godb, 52. But in fuch case, he may bring his action against the owner of the land for spoiling the way; or perhaps he may go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

But where a private way is spoiled by those who have a right to pass thereon, and not thro' the default of the owner of the land; it seemeth that they who have the use and benefit of the way ought to repair it, and not the owner of the foil, unless he is bound thereto by custom or

special agreement.

3. It hath been holden, that if there be an highway in How far outlete an open field, and the people have used time out of mind, are part of the when the ways are bad, to go by outlets on the land adjoining, fuch outlets are parcel of the way; for the king's fubjects ought to have a good passage, and the good passage is the way and not only the beaten tract; from whence it follows, that if such outlets be fown with corn, and

How far a river

Highway chang-

the beaten track be foundrous, the king's subjects may justify going upon the corn. I Haw. 201.

4. In books of the best authority, a river common to

may be an high-

all men is called an highway. I Haw. 201.
5. It feemeth to be agreed, that an ancient highway. cannot be changed, without the king's licence first obtained upon a writ of ad quod damnum, and an inquifition thereon found, that fuch a change will not be prejudicial to the publick; and it is faid, that if one change a bighway without fuch authority, he may ftop the new way whenever he pleases; and it seemeth that the king's subjects have not fuch an interest in such new way, as will make good a general justification of their going in it as a common highway, but that in an action of trespass brought by the owner of the land, against those who shall go over it, they ought to flew specially, by way of excuse, how the old way was obstructed, and the new one fet out; also it is faid, that the inhabitants are not bound to keep watch in fuch a new way, or to make amends for a robbery therein committed, or to repair it. 1 Haw. 201.

But by the 8 & 9 W. c. 16. Where any highway shall be inclosed after a writ of ad quod dammum issued, and inquisition thereupon taken, any person aggrieved by such inclosure may complain thereof by appeal to the next quarter fessions, whose determination shall be final; and if no appeal be made, the inquifition and return, entred and recorded by the clerk of the peace at the quarter fef-

fions, shall be binding to all persons. f. 6.

[Note, the writ of ad quod damnum is an original writ, issuing out of and returnable into the chancery, directed to the sheriff to inquire by a jury, whether such change will be detrimental to the publick, which inquifition, being a proceeding only ex parte, is in its own nature traversable; and before this act, the party grieved might be heard against it before the chancellor. But now by this act, jurisdiction is given to the justices in sessions to hear and finally determine appeals; that is, with respect to the fact (as it seemeth): but whether they may judge of the writ it felf, or the inquifition, as to their validity or legality, may be a question. Also, notwithstanding the act fays, that the inquisition and return entred and recorded at the sessions shall be binding to all persons; it may yet be doubted, whether the king's licence nevertheless is not necessary to be obtained, after the inquisition found and recorded, as it was before the making of the faid act.]

However it is certain, that a highway may be changed by the act of god; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes its course, and goes over different ground from that whereon it used to run, yet the highway continues in the new channel, in the fame manner as in the old. I Haw. 202.

An highway inclosed by virtue of a special act of parliament (for dividing and inclosing common fields, common pastures, or the like), shall continue to be repaired by the parish or township as it was before, unless otherwise directed by the act: for if he who inclosed the ground adjoining to the highway were in such case obliged to repair, it might happen that his allotment of the common would not be worth the expence of repairing the way. Burrow. 461. Rex v. Inhabitants of Flecknow. H. 30 G. 2.

6. The freehold of the highway is in him that hath the To whom the freehold of the foil; but the free paffage is for all the king's highway be-

liege people. 2 Inft. 705.

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H. 8 G. 2. Sir John Lade against Shepherd. Upon trial of an action of trespass, a case was made; that the place where the supposed trespass was committed, was formerly the property of the plaintiff, who some years since built a ftreet upon it, which has ever fince been used as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof rested on the highway. And it was insisted for the defendant, that by the plaintiff's making it a street, it was a dedication of it to the publick; and therefore however he might be liable to an indictment for a nufance, yet the plaintiff could not fue him as for a trespass on his private property. But by the court; It is certainly a dedication to the publick, so far as the publick has occafion for it, which is only for a right of passage: but it never was understood to be a transfer of the absolute property in the foil. So the plaintiff had judgment. Str. 1004.

II. Concerning the special sessions for the bighways.

1. The justices in their respective divisions, shall once in four months (on pain of 5 l.) hold a special sessions for the highways, and shall thereunto summon all the furveyors, and give them a charge, and declare unto them their duty. 3 W. c. 12. J. 9, 11.

2. And one of the faid fessions shall be holden on Jan. 3. yearly, or within 15 days after. 3 W. c. 12. f. 3.

III. Appointment of the surveyors.

1. On Dec. 26. yearly, unless it be funday, and then on the 27th, the constables, churchwardens, surveyors of the highways, and inhabitants in every parish, shall assemble, and the major part of them shall make a list of the names of a competent number of the inhabitants in their parish, who have an estate in lands, tenements, or hereditaments in their own or their wives right, of 101. a year, or a personal estate of the value of 1001. or are occupiers or tenants of houses, lands tenements, or hereditaments, of 301. a year, if any such there be, or if there be no such persons in the parish, then the said list to be of the most sufficient inhabitants. 3 W. c. 12. s.

2. And shall return such list to the special sessions to be held for that purpose within the division, on Jan. 3. or within 15 days after; of the time and place of which sessions so to be holden, the said justices shall give notice (A) to the constables, churchwardens, and surveyors, at

least ten days before. 3 W. c. 12. f. 3.

3. And if the constables, churchwardens, and surveyors shall not return such list, every of them making default shall forfeit 20s. by distress, by warrant of two of the said justices, or in default thereof, of any neighbouring justices; the same to be distributed, half to the informer, and half to the repair of the highways. 3 W. c. 12. s. 3.

4. And the faid justices shall then and there, out of the faid lists, according to their discretion, and the largeness of the parish, by warrant under their hands and seals (B), nominate and appoint one, two or more, as they shall think fit and approve of, to be surveyor or surveyors of the highways of every parish or town within the division

for the year ensuing. 3 W. c. 12. f. 3.

5. Which nomination and appointment shall by the constables or surveyors be notified to the person so nominated, within fix days after such nomination, by serving him with the said warrant, or by leaving the same, or a true copy thereof, at his house or usual place of abode; and from thenceforth he shall be surveyor. 3 W. c. 12.

6. If he shall not take upon him, and execute the office, he shall forfeit 51; in like manner. 3 W. c. 12. f. 3.

7. And in case of such neglect or refusal, the said furtices shall appoint others in like manner, who shall execute the office, on the like penalty. 3 W. c. 12. f. 3.

IV. Surveyor's general duty on acceptance of his office.

1. He shall receive what money remained in his prede- Receiving the

ceffor's hands. 3 W. c. 12. f. 9.

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2. He shall within 14 days after acceptance of his of- Making a survey fice, and fo from time to time every four months, or oftner, of the roads. if required thereunto, by warrant of two justices, view all the roads, common highways, bridges, caufways, pavements, hedges, ditches, and watercourfes appertaining to fuch highways, together with all nufances, or incroachments thereupon, and give a particular and true account in writing upon oath, of the state and condition of all fuch highways, and more especially of such faults and defects as want to be repaired, and of the neglects of labourers, to the next special sessions, to the end that the faid accounts may be carefully preferved, and that at all future fessions the justices of the division may have full information of, and may be able to examine into the particular state and condition thereof: And if he shall neglect to give fuch account, he shall fuffer the same penalty as if he refused to execute the office, to be levied and disposed of in like manner. 1 G. A. 2. c. 52. s. 2.

For which oath no fee shall be taken. f. 11.

3. And there is a general penalty of 40 s. laid on him Penalty for negby the acts of 3 W. c. 12. and 1 G. ft. 2. c. 52. for left of duty. any neglect of his duty, on either of the faid acts, to be levied and disposed of in like manner.

V. Who shall repair.

It feems to be agreed, that of common right (that is, Parish in general by the common law) the general charge of repairing all to repair. highways lies on the occupiers of the lands in the parish wherein they are: But there is no doubt, but particular persons may be burdened with the general charge of repairing a highway, in two cases:

1. In respect of an inclosure of the land wherein it lies; Repairing in reas where the owner of lands not inclosed, next adjoining spect of an into the highway, incloseth his lands on both fides thereof; in which case, he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the inclosure, if it were then any way defective;

fective; because before the inclosure, the people used, when the way was bad, to go for their better passage, over the fields adjoining, out of the common track, which liberty is taken away by the inclosure. I Haw. 202.

And if the way is not sufficient, any passenger may break down the inclosure, and go over the land, and justify it, till a sufficient way is made. 3 Salk. 182.

Also it hath been holden, if one inclose land on one fide, which hath been antiently inclosed of the other fide, he ought to repair all the way; but if there be not such an antient inclosure of the other fide, he ought to repair but half that way; and it is said, that wherever one is bound to repair a highway, in respect of an inclosure, and lays it open again as it was before, he shall be freed

from the charge of repairing it. 1 Haw. 202.

Repairing by prescription.

2. A particular person may be bound to repair a highway, in respect of a prescription; and it is said, that a corporation aggregate may be compelled to do it, by force of a general prescription, that it ought and hath used to do it, without shewing that it used to do so in respect of the tenure of certain lands, or for any other confideration; because such a corporation in judgment of law never dies, and therefore if it were ever bound to fuch a duty, it must needs continue to be always so; neither is it any plea, that such corporation hath always done it out of charity, for what it hath always done, it shall be prefumed to have been always bound to do: but it is faid, that a person cannot be charged with such a duty, by a general prescription from what his ancestors have done, unless it be for some special reason, as the having land descended from such ancestors, which are holden by such like fervice. I Haw. 202.

Yet it feems, that an indictment charging a tenant in fee simple, with having used of right to repair such a way by reason of the tenure of his land, is certain enough, without adding, that his ancestors or those whose estate he hath, have always so done; for that is implied. I Haw. 203.

But the indictment must set forth, where those lands lie. 2 H. H. 181.

VI. The proportion of labourers and carriages.

1. Every person, for every ploughland in tillage or pasture that he shall occupy in the parish, shall find and fend at every day and place appointed, one wain or cart, furnished

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nished after the custom of the country with oxen, horses, or other cattle, and all other necessaries meet to carry things convenient for that purpose, and also two able men with the same. 2 & 3 P. & M. c. 8. s. 2.

Every person] It hath been holden, that persons in holy orders are within the purview of these statutes, in respect of their spiritual possessions, as much as any other persons whatsoever in respect of any other possessions; for the words are general, and there is no kind of intimation that any particular persons shall be exempted more than others. I Haw. 204. But by the 30 G. 2. c. 25. persons serving for themselves as private men in the militia, shall during the time of such service be exempted from personally doing any highway duty, commonly called statute work. s. 23.

For every ploughland] Therefore if he occupies and keeps in his possession several ploughlands in several towns, he shall be charged to find in each town or parish where such ploughlands do lie, one cart or carriage, in like manner as if he were a parishioner in the several parishes. 18 El. c. 10. s. 4.

Ploughland] A ploughland is as much land as one draught can ordinarily plow in a year: Which by the 7 & 8 W. c. 29. as to repairing highways, is limited to 501. a year of woodland or other land. f. 5.

That he shall occupy It hath been holden, that notwithstanding the words of the statute extend only to the occupiers of land, yet if the owner neither occupy them, nor let them, but suffer them to lie fresh, he shall be charged as much as if he had occupied them; for there is no reason that the publick should suffer for his negligence. I Haw. 204.

In the parish And if he shall occupy a ploughland lying in several parishes, he shall be chargeable within the parish where he dwelleth, in like manner as a person having a ploughland in any one parish. 18 El. c. 10. f. 3.

2. Also every other person keeping a draught or plough in the parish, shall find and send one wain or cart in like manner, with two able men. 2 & 3 P. & M.

And it hath been holden, that he who keeps feveral draughts in a parish, is bound to send a team for each draught, whether he occupy any land in the parish or not. I Haw. 204.

Dighways.

3. And where there is no use of carts and teams for amending of highways, but the usage is to carry materials on horses backs or any other kind of carriage; the inhabitants shall fend fuch horses or carriages, with able persons to work with the same, under the like penalty as for carts and teams. 22 C. 2. c. 12. f. 8.

4. And if the faid carriages shall not be thought needful by the furveyor, then the person that should have fent fuch carriage, shall for every carriage so spared, fend

two able men. 2 & 3 P. & M. c. 8. f. 2.

5. Moreover, besides those persons who are obliged to fend carriages, every other person (except in London) that shall be affessed to the payment of any subsidy to 51. in goods, or 40 s. in lands, shall find two able men. 18 El. c. 10. f. 2.

6. And every other housholder, and also every cottager, and labourer able to labour, and being no hired fervant by the year, shall by themselves, or one sufficient labourer for every of them, work on the faid days. 2 & 2 P. &

M. c. 8. f. 2.

VII. Providing materials.

Surveyor may take and carry away rubbish.

1. The furveyor may take and carry away of the rubbish or smallest broken stones of any quarry within the parish, without licence, controulment, or impeachment of the owner, so much as he shall judge necessary for repairing the ways.

iring the ways. 5 El. c. 13. f. 3.

But he may not cause any rubbish to be digged out of a quarry, but only shall have such as shall be found there

ready digged by the owner or his order. 1. 4.

2. And for default of any quarry, not being within his limits, or in default of rubbish, not to be found there, he may gather stones lying upon any grounds within the parish, and meet to be used for such purpose; and thereof take and carry away so much as by his discretion shall be thought necessary to be imployed in the amendment of the

highways. 5 El. c. 13. f. 3.

3. Likewise in default of such quarry, or in default of fuch rubbish in any such quarry, he may in the several ground of any person within his limits, and nigh adjoining to the highway, and wherein gravel, fand, or cinders are likely to be found, dig or cause to be digged for them.

5 El. c. 13. J. 3. But he may not dig for the same, in any man's house,

garden, orchard, or meadow. id. f. 4.

May dig for gravel.

May gather

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Nor shall he cause any more pits to be digged for gravel, in any several and inclosed ground than one only, nor shall the pit be in length or breadth above ten yards over; and he shall within a month cause the pit to be filled with earth at the costs of the parishioners; on pain of forseiting to the owner of the soil, sive marks, to be recovered

by action of debt. id. f. 4.

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And by the 26 G. 2. c. 28. If any person shall by reafon of getting any gravel, fand, stones, chalk, or other materials, for repairing any highway, or for any other purpose whatsoever, make or cause to be made any pit or hole in any common, heath, or waste ground, he shall forthwith cause the same to be sufficiently senced off during fuch time as it shall be continued open, and shall within 14 days after digging for fuch materials in fuch pit or hole, cause the same to be filled up, sloped down or fenced off, and so continued; and if he shall not fill up, flope down or fence off the fame, and keep the faid fence from time to time in good repair, one justice on view, or oath of one witness, may order him to fill up, properly slope down, or fence off the same, and where any fence shall be fet up may order the same to be repaired; and if he shall not comply with such order in ten days after his receipt thereof, or the fame being left at his usual place of abode, and due proof being made upon oath before any one justice, of the offence committed, of the fervice of fuch order, and of the refusal or neglect to comply therewith, such person shall forfeit not exceeding 10 l. nor less than 40 s. to be laid out in filling up, floping down, or fencing off the same, and towards the repair of the roads in the parish or place where the offence shall be committed, and in such manner as the justice shall direct; which, if not forthwith paid, shall be levied by diffress, by warrant of such justice.

4. And whereas divers parishes and townships have not May purchase any gravel, stones, quarries, nor other materials, fit for materials, repairing highways, and the surveyor is forced to lay out his own money for buying the same, it is enacted, that upon notice given by the surveyor to the special sessions, and oath made of what sum he hath laid out, the justices there, or two of them, shall by warrant under their hands and seals cause an equal rate to be made for reimbursing the surveyor, according to the method of the poor rate prescribed by the 43 El. c. 2. which rate being confirmed and allowed by the said justices in their special sessions, shall be collected by the surveyor; and if any person re-

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fuse to pay, it shall be levied by the surveyor by distress.

3 W. c. 12. f. 13.

And if the justices refuse to make a rate, they are compellable by mandamus from the king's bench, on affidavit of the money having been laid out; and the mandamus shall be directed to the justices of the county, and served on those of the private sessions. I Haw. 206.

VIII. Concerning the fix days work.

1. The furveyor shall appoint fix days, for the providing stones, gravel, and other materials as aforesaid, and for working in the highways, having respect to the seafon of the year, and the weather, and giving notice publickly some convenient time before the several days. 22

€. 2. c. 12. f. 12.

2. And the justices at the special sessions, by writing under their hands and seals may order the reparation of those great roads which do most want repair, to be first amended, and at what time, or in what manner, the same shall be performed; according to which order the surveyor shall proceed; and if they make no such order, then according as to the surveyor shall seem most needful: And he shall take care, as far as possible, that the work be perfected before the time of harvest. I. G. st. 2. c. 52.

3. At the faid several days so appointed, all persons liable shall attend and work. 22 C. 2. c. 12. f. 12.

4. And every person and carriage shall have with them such shovels, spades, picks, mattocks, and other tools and instruments, as they make their own ditches and sences with, and such as are necessary for the work. 2 & 3 P. & M. c. 8. s. 2.

5. And they shall work eight hours each day, unless they be otherwise licensed by the surveyor. 2 & 3 P. &

M. c. 8. f. 2.

6. And if any person shall fail to make his respective days labour, or neglect to send his horses and carriages, the surveyor shall give an account thereof in writing or oath (C) to the special sessions (D), and two justices there may levy by distress (E) and sale of the goods of such defaulter (not having a reasonable excuse to be allowed by the said justices) for every day labourer 1s. 6d. for a man and horse 3s. for a cart with two men 10s. each day; the same to be imployed for and towards the repairing of the highways in the respective parish or place.

2 & 3 P. & M. c. 8. f. 2. 22 C. 2. t. 12. f. q. 1 G. ft. 2. c. 52. f. 2. Or the leet may inquire thereof, by fine and estreat. 2 & 3 P. & M. c. 8. f. 2.

IX. Of annoyances in general.

1. There is no doubt, but that all injuries whatfoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act, which will render it less commodious to the king's people, are publick nusances at common law. 1 Haw. 212.

2. And by the common law any one may abate a nufance to a highway, and remove the materials, but not

convert them to his own use. I Haw. 214.

3. Also it seemeth, that an heir may be indicted for continuing an incroachment, or other nusance to a highway, begun by his ancestor; because such a continuance thereof amounts in the judgment of law to a new nu-

fance. 1 Haw. 214.

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4. And by the statute of the 3 W. c. 12. f. 8. If fuch annoyances shall not be removed and amended within 30 days after notice given in the church immediately after fermon, by the furveyor, he shall within 30 days remove and amend the fame, and dispose thereof for the repair of the highways. And he shall be reimbursed what charges he shall be at in so doing, by the parties who should have done the same; and if they shall upon demand refuse or neglect to pay the same, the surveyor shall apply to a justice of the division, and in default thereof to a neighbouring justice of the county, and upon his making oath before such justice of the notice to the defaulter in manner aforesaid, he shall be repaid all fuch his charges as shall be allowed to be reasonable by the faid justice, to be levied by distress.

5. And by the I G. fl. 2. c. 52. If they shall not be removed in 30 days, after due notice thereof given by the furveyor; the offender shall forfeit any sum not exceeding 51. nor under 20 s. to be levied by warrant of the justices at the special sessions, by distress; to be ap-

plied to the repair of the highways. f. 8.

X. Ditches adjoining to the highway.

1. To suffer the ditches adjoining to a highway to be foul, by reason whereof it is impaired, is a nusance at common law. 1 Haw. 212.

2. And it is faid, that he who hath lands next adjoining to a highway, is bound of common right to fcour his ditches: But it is faid, that he who hath lands next adjoining to fuch lands, is not bound by the common law fo to do, without some special prescription for that purpose. I Haw. 213.

3. And by the statute of the 5 El. c. 13. f. 7. The ditches next adjoining to the highway shall be scoured by the owner of the soil which shall be inclosed with the same.

4. And by the 1 G, fl. 2. c. 52. If any person who ought to scour and keep open ditches, adjoining to the highways, shall not amend the same in 30 days after due notice from the surveyor, or shall leave the earth of ditches scoured in the highways for the space of eight days, he shall (on oath being made thereof at the special sessions by the surveyor) forseit for every eight yards of ditching not scoured and kept open 2s. 6d. by warrant of the justices at the said special sessions, by distress; to be applied to the repair of the highways. And the surveyor shall scour and open the said ditches. s. 8.

XI. Water in the big bway.

1. The surveyor may turn any water course or spring of water, being in the highway, into any ditch of the several ground of any person next adjoining to the highway, as by his discretion shall be thought meetest and most convenient. 5 El. c. 13. s. 6.

2. And every person that shall occupy any lands, adjoining to the said ground so adjoining to any highway, where any ditching or scouring ought to be, shall, as need shall require, ditch and scour in his ground so adjoining, whereby the water conveyed from the highway over the ground next adjoining, may have passage over the said ground so next adjoining. 18 El. c. 10. s. 6.

3. And if any person who ought to scour and keep open usual watercourses, adjoining or near to the highways, and effectually to amend them, shall by the space

of 30 days after due notice thereof given by the surveyor, neglect or delay to do the same, he shall (on oath thereof being made by the surveyor, before the justices at the special sessions) forfeit for every eight yards so not scoured and kept open 2s. 6d. to be levied by warrant of the said justices, by distress; and to be applied to the repair of the highways. And the surveyor shall scour and keep open such ditches and watercourses; and where the ditches and drains already made are not sufficient to carry off the water, the surveyor may make new ones in and through the lands next adjoining or near to the highways, and keep them scoured, cleansed, and open, and may come upon the lands with their workmen for that purpose. I G. st. 2. c. 52. st. 8. 3 W. c. 12. st. 12.

XII. Hedges adjoining to the bigbway.

1. It feemeth clear, that it is a nusance at common law, to suffer the boughs of trees growing near the highway, to hang over the road in such a manner, as thereby to incommode the passage. 1 Haw. 212.

2. And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the fame; and it feems clear, that any perfon may justify the lopping such trees, so far as to avoid

the nusance. 1 Haw. 213.

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3. And by the statute of the 7 G. 2. c. 9. it is provided, that if the surveyor on his view shall find any highway deep and foundrous, and the hedge adjoining to be so high as to prevent the benefit of the fun and wind, he shall make a presentment thereof to the justices at their special seffions; which justices, or two of them, may by warrant fummon the occupier of the lands adjoining to the highway, to appear at the next monthly or other publick meeting of the justices, in or near the division, to shew cause why fuch hedge should not be new made, or cut low; and if such person appear not, nor send some person to appear, or if it shall appear upon proof on oath that such way is deep and foundrous, and damaged by the height of fuch hedge, the faid justices, or two of them, shall issue a precept under hand and feal to the furveyor to give or leave notice in writing at the usual place of abode of such person whose hedge was presented, that he is thereby required to new make or cut low the faid hedge, within 30 days after such notice (provided, that such notice be given

given between September 30, and February 1.) and in case of his refusal or neglect to do the same within the said 30 days, the surveyor shall cause the hedge to be new made or cut low, as he shall think most reasonable, so as such hedge be left at least three soot high above the

bank. f. I.

And such person shall repay to the surveyor such reafonable expences as he shall have been put to on that occasion; and if he shall refuse or neglect to repay the same, within 14 days after demand, the justices upon complaint thereof at their monthly or other publick meeting, in or near the division, and due proof upon oath of such expences of the surveyor, shall issue a precept under the hands and seals of them, or two of them, to the constable or other proper officer of the hundred, parish, or place, requiring him to levy the said sum by diffress. id,

But nothing herein shall alter the laws in relation to timber trees, which grow in hedges adjoining to the high-

ways. id. f. 3.

XIII. Wood growing in the highway.

No tree, bush, or shrub, shall be permitted to grow in any highway not sull 20 foot broad, but shall be cut down, grubbed up, and carried away by the owner of the land or soil, in 10 days after notice given to him by the surveyor; on pain of 5s. by distress, by warrant of two justices of the division, or in default thereof, of any neighbouring justices of the county; and to be applied, halt to the informer, and half to the repair of the highways. 3 W. c, 12, s. 6.

XIV. Straw, dung, stones, timber, laid in the bighway.

1. There is no doubt, but that all obstructions by laying straw, dung, stones, logs of timber, and the like, in the highway, are nusances at common law. I Haw.

212,

2. And it feemeth to be clear, that it is no excuse for one who layeth such logs in the highway, that he laid them only here and there, so that the people might have a passage by windings and turnings through the logs: yet it is said to be no nusance for the inhabitants of a town to unlade billets, and the like, in the street before their houses, by reason of the necessity of the case, unless they

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fuffer them to continue there an unreasonable time after they are unloaded, 1 Haw. 212.

3. And by the flatute of 3 W. c. 12. No person shall lay in any highway, not being 20 foot broad, any stone, timber, straw, dung, or other matter, whereby the same shall be any ways obstructed or annoyed; on pain of 5s. by distress, by warrant of two justices of the division, or in default thereof, of any justices of the county; half to the informer, and half to the repair of the highways. s. 4.

And if any timber, stone, hay, straw, stubble, or other matter for the making of dung, or on any other pretence, shall be laid in any such highway, whereby the same shall be any ways obstructed or annoyed; the owner or possessor of the lands next adjoining, shall clear the way by removing the same, and shall take the same to his own use; and if he shall neglect so to do, for ten days after notice given to him by the surveyor, he shall forfeit 5s. in like manner. s. 5,

4. And by the 1 G. ft. 2. c. 52. If any person who ought to remove such annoyances, shall for 30 days after due notice thereof given by the surveyor, neglect or delay to do the same; he shall forseit not exceeding 51. nor under 20s. by warrant of the justices at the special sessions, by distress, to be applied for the amendment of the highways: and the surveyor shall remove the same. s. 8.

XV. Empty carriages left in the bighway.

By the 30 G. 2. c. 22. If any person shall set, place, or leave any empty waggon, cart, or any other carriage, in any publick highway, so as in any manner to interrupt or hinder the free passage of any other carriage, or of his majesty's subjects, except only during such reasonable time as the same shall be loading or unloading; he shall, on conviction by confession, or oath of one witness before one justice, forfeit any sum not exceeding 20s. by diffress; for want of such sufficient distress, to be committed to the house of correction or some other prison of the place in which the offence shall be committed, or the offender shall be apprehended, to be kept to hard labour for any time not exceeding one kalendar month. s. 8.

The faid penalty to be half to the informer, and half to the surveyor of the highways in the parish where the offence shall be committed, to be by him applied in the repair of the highways within such parish. f. 10.

And any person who shall see any offence committed against this act, may by authority of this act, and without any other warrant, apprehend the offender; and shall with all convenient speed convey or deliver him to a constable or other peace officer of the place where the offence shall be committed or the offender shall be apprehended, in order to be conveyed before a justice, there to be dealt

with according to law. J. 13.

And if he shall refuse to discover his name and place of abode, to the justice before whom he shall be brought; he shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction of the place where the offence shall be committed, there to remain until he shall declare his name and place of abode to the faid justice, or to some other justice of such place. f. 11.

And any person shall be admitted to be an evidence, notwithstanding his being an inhabitant of the place

where the offence shall be committed. f. 14.

Provided, that persons punished by this act shall not be punished by any former law. f. 15.

XVI. Gate erected across the highway.

A gate erected in a highway, is a common nusance, because it interrupts the people in that free and open passage which they before enjoyed, and were lawfully intitled to; but where such a gate has continued time out of mind, it shall be intended that it was fet up at first by consent, on a composition with the owner of the land on the laying out the road, in which case the people had never any right to a freer passage than what they still enjoy. I Haw. 199.

XVII. Nusance by an unlawful number of borses or beasts in carriages.

This is to be understood with respect to highways in general; what concerneth the number of horses or beafts in carriages upon turnpike roads in particular, is treated of

hereafter in its place.

Penalty of having above five

1. No travelling waggon, wain, cart, or carriage, wherein any goods shall be carried (other than such as horses in length, are employed in or about husbandry and manuring of lands, and in the carrying of hay, straw, corn unthrashed, coal, chalk, timber for shipping, materials for building, stones of all forts, ammunition or artillery for his majesty's jesty's service) shall travel in any highway, with above five horses at length; on pain of 40s. on conviction before one justice, on his view, or oath of one witness, by 22 C. 2. c. 12. J. 7.

And every constable, or surveyor, wilfully suffering any waggons or carts to pass through his limits, in other manner than by this act is allowed, shall forfeit in like manner

40s. id. f. I.

2. No travelling waggon, wain, cart or carriage, Penalty of hawherein any goods shall be carried (other than such as are ving above five employed about husbandry and manuring of lands, and in length, the carrying of hay, straw, corn unthrashed, chalk, timber for shipping, materials for building, stones of all forts, ammunition or artillery for his majesty's service) shall go with above five horses, oxen, or beatts in length; on the like pains, and subject to the like provisoes, as by the 6 An. c. 29. and 9 An. c. 18. hereafter following. 1 G.

A. 2. C. 11.

3. No waggon (whether travelling for hire or not, 14 Penalty of ha-G. 2. c. 42. f. 6.) shall go or be drawn with more than fix ving above fix horses, either in length, or in pairs, or sideways; on pain pairs or sidethat the owner or driver shall forfeit all his horses above ways. fix, with all geers, bridles, halters and accourrements, to him who shall seize or distrain the same. And the person who shall make such seizure or distress, shall deliver the fame to the constable, or some parish officer, of the same or next adjacent parish where the seizure is made, till the person seizing shall make proof upon oath before some juflice, of the offence committed; and the faid justice shall issue his precept to such officer, immediately to deliver the fame for the fole use of the person seizing, paying such reasonable charge for keeping and securing the same, as the justice shall direct. And if any person shall attempt to obstruct the execution hereof, he shall on conviction by the oath of one witness before one justice, be committed to gaol for three months, and shall also forfeit 101. by warrant of fuch justice by diffress, and if not paid in three

days, the diffress to be sold. 5 G. c. 12.

But the statute of the 27 G. 2. c, 20. allows a further time for keeping all fuch diffresses, viz. not less than four

days, nor more than eight.

Or, before the goods are seized, oath may be made at any time within three days, before any justice where the offence was committed, or the offender shall happen to be; and the goods shall remain for three days after the offence liable to seizure and distress, for the use of the informer in

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riage, ch as ng of ashed, lding, s majesty's like manner as if they had been seized in the fact. 14 G. 2.

c. 42. f. 6.

Or (as hath been faid at the beginning of this title) an action of trover may be brought for the same, wherein if the plaintiff recovers, he shall have double costs. 24 G. 2.

c. 43. f. II.

H. 16 G. 2. K. and Thomas Sergifon, esquire. An information was moved for against him, for not condemning a horse taken out of a team under the statute of the 5 G. c. 12. which requires proof to be made before a juflice, of the cause of forseiture; and the party who seized tendring his own oath, the defendant scrupled to take it. or to determine the affair in the absence of the owner or driver. And by the court, they were both reasonable objections. Why is not the person who seized, and is to have the benefit of the forfeiture, within the reason of excluding informers where there is a penalty? Making proof must mean legal proof. The other also is but natural justice: There are exceptions in this act, as to one stone, or one piece of timber, though drawn by ever so many horses; and ought not the owner to have an opportunity of shewing it? And the rule was discharged with costs. Str. 1181.

Or above four horses in carts.

And moreover, no cart (whether travelling for hire, or not for hire, 14 G. 2. c. 42. f. 6.) shall be driven with more than (four horses, 16 G. 2. c. 29.); on pain that the owner or driver shall in like manner forfeit all the horses above four, with the geers, bridles, halters and accountre-

ments, 5 G. c. 12. f. 1.

But nothing in this section shall extend to such waggons, wairs, carts, or carriages, as shall be employed about husbandry or manuring of land, and in the carrying of cheese, butter, hay, straw, corn unthrashed, coals, chalk, or any one tree, or piece of timber, or any one stone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private use, or such timber, amountaintion, or artillery as shall be for the service of the king, his heirs and successors. 5 G. c. 12. s.

Penalty of having above fix horfes or oxen, in length, pairs, or fideways.

4. By 6 An. c. 29. and 9 An. c. 18. No travelling waggon, wain, cart, or carriage, wherein any goods shall be carried (other than such as are employed in and about husbandry and manuring of land, and in the carrying of hay, straw, (corn unthrashed, 1 G. c. 11.) chalk, timber for shipping, materials for building, stones of all sorts, or ammunition or artillery for the service of his majesty, his heirs or successors) shall travel or go in any highway, with above

fix

fix horses, oxen, or beasts; on pain of 51. And any perfon may seize or distrain any or all the horses, oxen, or beasts of any person offending herein, and forthwith deliver them to the surveyor or other parish officer, and if the penalty is not paid in three days, such officer shall by war, rant of one justice sell the same; rendring the overplus, charges first deducted.

And if any person employed by any carrier, drive or affift in driving such unlawful number, he shall forseit

in like manner.

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And the surveyor wilfully suffering them to travel with

more, shall also in like manner forfeit 51.

5. But nothing in any of the aforesaid acts shall extend Exceptions of to restrain the owners of waggons or other carriages, or drawing up steep their servants, drawing with so many horses or beasts, up any such steep hills, as the justices at their quarter sessions shall from time to time order and direct; which order shall be kept by the clerk of the peace amongst the records of the sessions, to which all persons at reasonable times, shall have recourse gratis. 24 G. 2. c. 43. s. 10.

XVIII. Nusance by unlawful breadth and tire of wheels.

1. No travelling waggon for hire (other than fuch as are Breadth of employed in husbandry, and in carrying of cheese, butter, hay, ftraw, corn unthrashed, coals, chalk, or any one tree or piece of timber, or any one stone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private use, or timber, ammunition, or artillery for the king's fervice) having the wheels bound with streaks or tire of a less breadth than two inches and an half when worn, or being fastened on with roseheaded nails, shall go or be drawn with more than three horses, between Sep. 29, and April 15, yearly; on pain that every owner or driver thereof, fh \ forfeit all the horses above three, with all geers, bridles, halters, and accourrements; to be seized, distrained, or otherwise recovered, as the number of horses above fix in a waggon either in length, pairs, or fideways, as is particularly specified under the third section of the last preceding head. 5 G. c. 12. 14 G. 2. c. 42. f. 2, 6. 15 G. 2. c. 2. 24 G. 2. c. 43. f. 11.

[What belongeth to the breadth of wheels upon turnpike roads in special, is treated of under the article relating

to turnpikes hereafter following.]

els in Lon- 2. No person in London and Westminster, of within 10 miles thereof (unless it be with broad wheels upon turnpike roads, 26 G. 2. c. 30. f. 5.) shall carry at any one load, in waggons or carts having their wheels shod with iron, more than 12 facks of meal of 5 bushels each, nor more than 12 quarters of malt, nor more than 700 1 of bricks, nor more than one chalder of coals; on pain of forfeiting any one of the horses, with the geers, bridles, and halters therewith used, on conviction in three days before one justice. 6 G. c. 6. 5 G. c. 12. 14 G. 2. c. 42. f. 6.

And by the 18 G. 2. c. 33. The wheels of every cart, car, or dray, within the bills of mortality, shall be fix inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horses, after they are up the hills from the water side; on pain of 40s, by warrant of one justice, by distress; and for want of diffress, or non-payment in fix days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that shall bring any goods, or shall carry any goods half a mile beyond the paved streets of the faid cities and places.

Also any person, within the said limits, using any cart, car, or dray, having the wheels full fix inches broad, when worn, may have the fame bound round with tire of iron, provided it be fix inches broad, and made flat, and

not fet on with rofe-headed nails.

XIX. Nusance by riding upon carriages, or the drivers otherwise misbehaving.

1. By the 1 G. A. 2. c. 57. If any person driving any cart, dray, or waggon, in the streets of London, shall ride upon the fame, not having some other person on foot to guide the same; he shall on conviction before the alderman of the ward, or justice of the peace, on oath of one witness, forfeit 10 s. by diffress and sale; half to the informer, and half to the poor; and in default of payment, to be fent to the house of correction for three days. /. 8.

2. And by the 24 G. 2. c. 43. If any carter, drayman, carman, waggoner, or other driver shall ride upon the same in London or within ten miles thereof, not having some other person on foot to guide the same, he shall on the like conviction, forfeit 10 s. in case such driver shall not be the owner of such carriage; and in case he be the owner, then any fum not exceeding 20s. To be

recovered,

recovered, levied, and applied, as by the aforefaid act of the 1 G. ft. 2. c. 57. And any person, though not a peace officer, may stop and apprehend such offender, and carry him as foon as conveniently may be before a juffice; and if any person shall resist, abuse, or prevent any perfon indeavouring to apprehend fuch offender, or when he is apprehended, shall rescue, or indeavour to rescue him,

he shall forfeit 20 s. in like manner. f. 8, 9.

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3. And, more generally, by the 27 G. 2. c. 16. If the driver of any cart, car, dray, or waggon, shall ride upon any fuch carriage, not having fome other person on foot or on horseback to guide the same (such carts as are refpectively drawn by one horfe only, or by two horfes abreaft, and are conducted by fome person holding the reins of fuch horse or horses, excepted); or if the driver of any carriage whatfoever, on any part of any street or highway, shall by negligence or wilful misbehaviour, cause any hurt or damage to any person passing or being thereon; every fuch driver offending in any of the cases aforefaid, and being convicted thereof, by confession, or oath of one witness, before one justice, shall forfeit any sum not exceeding 10 s. or shall be committed to the house of correction, for any time not exceeding one month, at the discretion of such justice. And every such driver, offending in either of the faid cases, may by authority of this act, and without any other warrant, be apprehended by any person who shall see the offence committed, and shall be immediately conveyed or delivered to a constable, or other peace officer, in order to be conveyed before a justice, to be dealt with according to law. f. 7.

Note; It is not faid who shall have this penalty, so that it feemeth that the justice shall estreat the same into the exchequer: And here is no power given to levy the fame by diffress; but if the party shall not pay upon conviction, the justice (by the act) may commit him to the

house of correction.

4. And by the 30 G. 2. c. 22. If the driver of any carriage within London or Westminster, or in any publick threet or common highway within the bills, shall by negligence or wilful misbehaviour, interrupt the free passage of his majesty's subjects; he shall on conviction by confession or oath of one witness, before one justice forseit any fum not exceeding 20s. or be committed to the house of correction, or some other prison of the place where the offence shall have been committed, or the offender shall have been apprehended, to be kept to hard labour for any

time not exceeding one kalendar month. The faid forfeiture to be levied by diffres by warrant of such justice; and to be half to the prosecutor, and half to the overseers for the use of the poor of the parish or place where the offence shall be committed, or the offender shall be apprehended; and if there be no overseer, then to some other officer for the use of the poor as aforesaid. f. 7, 12.

And furthermore, by the fame statute, if the driver of any waggon, cart, car, dray, or other carriage, on any publick highway, shall ride upon any fuch carriage, not having some other person on foot or on horseback to guide the same (such carriages as are drawn by one horse only, or by two horses abreast, and are conducted by some perfon holding the reins, excepted); or if the driver of any carriage whatfoever on any of the faid highways, shall by negligence or wilful misbehaviour, interrupt the free passage of any other carriage, or of his majesty's subjects on the faid highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse or neglect to turn aside, and make way for any coach, chariot, chaife, loaded waggon, cart, or other loaded carriage: he shall, on conviction by confession, or oath of one witness, before one justice, forfeit any sum not exceeding 20 s. by diffres; for want of sufficient diffres, to be committed to the house of corection, or some other prison of the place where the offence shall be committed, or the offender shall be apprehended, to be kept to hard labour for any time not exceeding one month. penalty to be half to the informer, and half to the furveyor of the highways in the parish where the offence fhall be committed, to be by him applied in the repair of the highways within fuch parish. f. 9, 10.

And any person who shall see any offence committed against this act, may by authority of this act and without any other warrant apprehend the offender, and shall with all convenient speed convey or deliver him to a constable or other peace officer of the place where the offence shall be committed or the offender shall be apprehended, in order to be conveyed before a justice, there to be dealt with

according to law. f. 13.

And if he shall refuse to discover his name and place of abode, to the justice before whom he shall be brought; he shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction of the place where the offence shall be committed, there to remain until he shall declare

declare his name and place of abode to the faid justice, or to some other justice of such place. f. 11.

And any person snall be admitted to be an evidence, notwithstanding his being an inhabitant of the place where the offence shall be committed. J. 14.

Provided, that persons punished by this act shall not

be punished by any former law. J. 15.

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XX. Pulling up blocks in the bighway.

Every person who shall pull up, cut down, or remove any post, block, great stone, bank of earth, or other security, made for fecuring horse and foot causways from waggons, wains, and carts; shall (on conviction before one justice of the place or division, on view or oath of one witness) forfeit 20 s. by distress, half to the surveyor for the repair of the highways, and half to him that shall discover the same. 7 & 8 W. c. 29. s. 6.

XXI. Concerning guide posts.

The justices, at the special sessions, may direct their precept to the furveyors, in any place where two or more cross highways meet, requiring them forthwith to cause to be erected or fixed, in the most convenient place where fuch ways join, a stone or post, with an inscription thereon in large letters, containing the name of the next market town, to which each of the faid joining highways leads; who shall be reimbursed in the same manner as before is mentioned concerning the providing of materials. And if the surveyor shall, by the space of three months after such precept to him delivered, neglect or refuse to cause such stone or post to be fixed; he shall forfeit 10 s. to be levied by warrant of one justice by the constable, by diffress, who shall imploy it towards such stone or post; and if any thing remains, he shall imploy it in repairing such cross ways. 8 & 9 W. c. 16. f. 7.

XXII. Breadth and widening of the bighways.

1. The surveyor shall make every cart way leading to any market town, eight foot wide at the least. 3 W. c. 12.

2. And no horse causway shall be less than three foot 3 W. c. 12. J. 21.

3. By the 8 & 9 W. c. 16. The justices, or the major part of them, being five at the least, at the quarter seffions, shall have power to inlarge or widen any highways, so that the ground to be taken into them do not exceed eight yards in breadth, and so that the said power do not extend to pull down any house, or to take away the ground of any garden, orchard, court, or yard. s. 1.

In order whereunto, they shall issue their precepts to the owners of grounds, or others interested in the same, that are to be laid into the said highways, to appear at the next quarter sessions, to shew cause why the said

highways should not be inlarged. f. 3.

And for the fatisfaction of persons who are interested in the said ground, they are impowered to impanel a jury, and swear them, that they will assess such damages to be given and recompense to be made to the owners and others interested in the said ground rent or charge respectively, for their respective interests, as they shall think reasonable, not exceeding 25 years purchase for lands so laid out; and likewise such recompense as they shall think reasonable, for the making a new ditch and sence, to that side of the highway that shall be so inlarged, and also satisfaction to any person that may be otherwise injured by inlarging the said highways. I.

And they shall have power to order an affessment to be made upon all the inhabitants, owners or occupiers of lands, houses, tenements, or hereditaments, that ought to repair the same, in such manner as the said justices shall

appoint. f. 1.

Provided, that no fuch afferiment in any one year, for inlarging highways, shall exceed 6 d. in the pound of the yearly income of any lands, houses, tenements, and hereditaments, nor the rate of 6 d. in the pound for perfonal estates. s. 2.

And the faid affefiment shall by order of the faid justices be levied by the surveyor, by diffress, if not paid in 10

days after demand. f. 1.

And the money thereby raifed, shall be imployed and accounted for, according to the order of the said justices, towards purchasing the said lands, and making the said

ditches and fences. f. 1.

And upon payment of the money so awarded, or leaving it in the hands of the clerk of the peace for the use of the owner, or others interested in the said ground, the interest of the said persons in the said ground rent or charge, shall be for ever devested out of them. s. 1.

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And the faid ground shall be esteemed a publick high-

way to all intents and purposes. f. I. Provided, that if any fuch order shall be made by the faid justices for the laying out of ground for the inlarging of highways, the owners of the ground shall have free liberty, within 8 months after fuch order, to cut down any wood or timber growing thereon; or upon the neglect thereof, the same shall be fold by order of the justices, and the owners shall receive the full of what shall be made thereof, the charges of working the fame being deducted.

And any person aggrieved by the order of the justices, may appeal to the next affizes; and if the judge shall affirm the order, he may award costs against the appellant, to be levied by diffrefs.

J. 5. 4. In order to prevent robberies, it is enacted by the 13 Ed. 1. St. 2. c. 5. That highways leading from one market town to another shall be inlarged, so that there be neither dyke, tree, nor bush, within 200 foot on each fide of the way. Except ashes and great trees. And if by default of the lord that will not avoid the dyke, underwood, or bushes, any robbery be done therein, the lord shall be answerable for the felony; and if murder be done, the lord shall make a fine at the king's pleasure. And if the lord be not able to fell the underwoods, the country shall aid him. And if a park be taken from the highway, it is requifite that the lord shall set his park 200 foot from the highways, or that he make fuch a wall; dyke, or hedge, that offenders may not pass nor return to do evil.

XXIII. Lands given to repairing highways.

Where any lands have been, or fhall be given for the maintenance of causeys, pavements, highways, and bridges, the trustees shall let them to farm, at the most improved yearly value, without fine, and the justices in open seffions shall inquire by fuch ways and means as they think fitting, into the value of fuch lands; and if the truftees have been faulty, they may order the improvement and imployment of the profits thereof, according to the direction of the donor. (Except lands given for the faid uses to colleges or halls, which have vifitors of their own.) 22 C. 2. v. 12. f. 2.

XXIV. Assessment for the repair of highways.

Where the justices at the general or quarter sessions, shall be fully satisfied, that the highways within any parish, township, or place, cannot otherwise be sufficiently repaired, an affessment upon all the inhabitants, owners, and occupiers of lands, tenements and hereditaments, or any personal estate, usually rateable to the poor, shall be made, levied, collected, and allowed by fuch perfons, and in fuch manner, as the faid justices by their order at fuch fessions shall appoint: And the money thereby raised, shall be imployed and accounted for, according to the orders and directions of the faid justices, towards repairing and supporting the same: And the said affestment shall be levied by diffress and sale of the goods of every person so affeffed (not paying the same within 10 days after demand). Provided, that no fuch affessment in any one year, shall exceed 6 d. in the pound of the yearly value of any lands, houses, tenements, and hereditaments so affessed, nor the rate of 6d. for 201. in personal estate. 3 W. c. 12. f. 17, 18.

And on application of the furveyor, the faid justices may, if they see fitting, cause such affestiment to be made, altho' the fix days work hath not been performed; but the said affestiment shall not excuse the fix days labour.

I G. A. 2. c. 52. f. 6.

T. 6 G. K. and the inhabitants of Stroud. An order for imposing a rate towards the repairs of the highways, was quashed for two exceptions: 1. Because it did not appear but that the statute labour was sufficient. And, 2. Because only the occupiers of land are charged, whereas others are equally liable. Str. 315. In all such cases, it is best to pursue the statute; and the order therefore in this case should have set forth, not that the statute labour was insufficient, but that the court was fully satisfied that the highways could not otherwise be sufficiently repaired; and they should have ordered an assessments, end occupiers of lands, tenements, and bereditaments, or any personal estate, usually rateable to the poor, within the parish or district.

XXV. In what case the whole parish shall be contributory.

If any inship, liberty, precinct, or vill, that was to repair its own highways, shall have levied 6d. in the pound,

pound, and imployed the fame in repairing, and yet the faid highways are not sufficiently repaired, the justices at their special sessions may order the whole parish to contribute towards the repairing thereof. 7 & 8 W. c. 29. J. 4.

XXVI. Further provision for the same, by the com-

It is no excuse for the inhabitants of a parish, being indicted at common law, for not repairing the highways, that they have done all that is required of them by statute; for fince these statutes are wholly in the affirmative, and made in aid of the common law, and to supply the defects thereof, they shall not be construed to abrogate any provision thereby made for these purposes. I Haw. 204. So that at all events, the parish may be compelled to make their ways good.

XXVII. Presentment or indistment (F) of bigbways in general.

1. All defects of repairs of highways, shall be present-indiament to be ed in the county where they lie, and not elsewhere. 22 within the county.

2. And the indictment must shew, that the way is Must shew it to common to all the king's people; for which cause it hath be a highway. been resolved, that an indictment for a nusance to a horseway, without adding that it is a highway, is naught. I Haw. 220.

Note; The expression for the king's highway, when the indictments were in Latin, was alta via regia; which a modern author, in his form of an indictment, translates a royal highway.

3. It is fafeft in the indictment to shew both the place Must shew the from which, and also the place to which the way supposed places from and to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been disallowed: however it seems certain, that there is no necessity to shew that a highway leads to a market town, because every highway leads from town to town. I Haw. 219.

4. It is necessary in the indictment express to shew, in Place where, what place the nusance complained of was done; for which cause an indictment for stopping a way at D. leading from D. to C. is not good, for it is impossible that a way leading from D. should be in D. and no other place is mentioned. I Haw. 219.

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Need not name the inhabitants. 5, It is faid, that a prefentment that a highway in such a place is decayed, by the defaults of the inhabitants of such a town, is good, without naming any person in certainty. I Haw. 220.

Indictment against particular persons.

6. But it hath been adjudged, that an indictment against particular persons, must specially charge them every one.

Must set forth how much is out of repair.

7. It ought also certainly to shew, to what part of the highway the nusance did extend, as by shewing how many foot in breadth it contained, or otherwise the defendant will neither know of the certainty of the charge, against which he is to make his desence, neither will the court be able from the record to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and it hath been resolved, that the place is not sufficiently assertained by shewing, that it contained so many foot in length, and so many in breadth, by estimation. I Haw. 220.

Must fet forth

8. Also, the fact must be expressed in such proper terms, that it may clearly appear to the court to have been a nussance; and for this cause it hath been resolved, that a presentment for diverting a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, howsoever it may be abstructed, and a new way made in another place. I Have.

Persons indicted to have notice.

9. It feems to be implied in the conftruction of all penal flatutes, that no one ought to be convicted of any offence against them without having notice of the accusation made against him, and an opportunity of defending himself. And therefore it seems certain, that generally no one ought to be punished for any of the abovementioned offences, without being called upon to answer for himself, and having liberty to traverse the matters alledged against him. I Haw. 219.

Plea of not guilty.

10. Upon an indictment against a parish for not repairing, they can give nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be against a particular person, he may give evidence that others ought to repair it. 3 Salk. 183. Comb. 396.

Plea to charge others. ought not to repair, without shewing who ought. I

Special plea,

12. And Mr. Hawkins fays, that if a particular person, be bound to repair a highway, either by inclosure or by prescription, the parish cannot take advantage of it upon the

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thing his v by a fuch plea of not guilty, but ought to fet forth their discharge in

a special plea. I Haw. 203.

13. After conviction, or upon a demurrer, or confession, Exceptions to the any one may take exceptions to such indictment or present-dictment. ment in any court for the want of legal form; but the court in discretion will very rarely suffer a man to take such exceptions, before such conviction or confession, without a certificate and affidavit that the ways are in good repair. I Haw. 219.

14. And the defendants shall not be discharged by sub- Fine no dismitting to a fine, but a distringus shall go in infinitum till charge.

they repair. I Haw. 220.

XXVIII. Presentment of a justice on his own view.

By the 5 El. c. 13. Every justice of the peace shall have authority on his own proper knowledge, in the open general sessions, to make presentment (G) of any highway not well and sufficiently repaired, or of any other default contrary to the statute of the 2 & 3 P. & M. And every such presentment made by a justice upon his own knowledge shall be as good, and of the same force, strength, and effect in the law, as if the same had been presented, found and adjudged by the oath of 12 men: and for every such default so presented, the justices shall immediately at the said general sessions, have authority to assess such sines as to them shall be thought meet: Saving every perfon that shall be touched by any such presentment, to have his lawful traverse to the same presentment, as they may have upon any indictment of trespass or forcible entry.

Hereupon it hath been observed by Mr. Dulton and others, that the justices at the said sessions may assess the sine upon such offenders, and that in the absence of the party, without calling him to answer by any process: Which opinion seeming contrary to natural justice, and to the privilege of an Englishman as established by the great charter, perhaps hath not been sufficiently weighed by all the authors who have adopted it; and there seems to be the more ground for this suspicion, in that most of them quote Mr. Grompton for this opinion, one after another, in a wrong page; and in fact Mr. Grompton saith no such thing, but rather seems to incline to the contrary opinion; his words are these,—A presentment at the sessions by a justice of the peace, upon his own knowledge, of such a highway not repaired, is as a presentment of 12

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men, upon which the justices may affess a fine by & El. c. 13. and 3 P. & M. c. 8. but the party may have a traverse to the presentment by the said statute of 5 El.

Cromp. 110.

And Mr. Hawkins, observing upon this opinion, faith thus: It hath been holden, in the exposition of this clause, that the party against whom such a presentment shall be made, cannot take any traverse to the want of repair of fuch highway; but it is agreed, that he may plead that some other person ought to repair the same, and traverse his own obligation to do it. Neither can I fee upon what reason the former opinion is grounded, that he cannot traverse the want of repair of such highway; for since the statute expresly saves to every person who shall be touched by any fuch presentment, his lawful traverse to the same, as he might have to an indictment of trespass or forcible entry; and fince it feems clear, that every defendant to any such indictment (viz. of trespass or forcible entry) may traverse the whole matter alledged against him, why may he not as well have the fame benefit in the prefent case? And tho' the record of a justice of the peace, acting by force of any flatute, as a judge be not traversable, yet it feems hard by fuch a general rule, to make any record not traverfable, which by the express words of the statute which authorizes the making of it is allowed to be traversable. 1 Haw. 217.

To which may be added, that the flatute doth not fay, that such presentment shall be of like force as if found by the oaths of both juries (that is to fay, both of the grand and traverse jury), but only that it shall be of the like force, as if it had been presented, found and adjudged, by the oath of 12 men; which can only intend, that it shall be of equal force with the presentment of a

grand jury.

So that the sense of the statute perhaps may be no more than this; that if the party is present in court, and submits to the presentment, the justices may immediately asfels a fine: but he may traverse the presentment if he will; and if upon the traverse he shall be acquitted, then there can be no foundation for fining him. if he is absent, it is reasonable that he be first summoned to answer for himself; and if he shall afterwards be convicted either by confession, or by verdict, then will be the time to set the fine. Otherwise, the assessing of a fine, in this and the like cases, seemeth to be premature, beginning where the court should end; being in effect the g and then the c meri judge cour

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the giving of judgment before they have heard the parties; and it is possible the defendant may be acquitted, and then the fining of him is ridiculous.—Besides, that the court cannot so well judge beforehand of the quantum of the fine, which ought to be proportioned to the demerits of the offence; of which they can by no means judge, until the matter hath come before them in a legal course of proceeding.

XXIX. Power of the leet to punish offences.

- 1. The steward of the leet hath power given him, to inquire by the oaths of the suitors, of offences against the abovesaid statutes of 2 & 3 P. & M. c. 8. and 18 El. c. 10. and to assess fines and amerciaments for the same.
- 2. And he who is presented in a court leet, for any offence relating to the highways, can only traverse it so far as it concerns his freehold; as by charging him with being bound to such repairs in respect of the tenure of his lands; for which purpose he may remove it by certiorari into the king's bench, and there traverse it. 1 Haw. 219.

XXX. Fines and the disposal thereof.

1. No fine shall be returned into the exchequer; but shall be levied and paid into the hands of the surveyors, to be applied towards the repair of the high-

ways. \int . 14.

2. And if any fine imposed for not repairing shall be levied on any one inhabitant, or more; such inhabitant shall make complaint to the justices at the special sessions, and the said justices or any two of them may by warrant under their hands and seals cause a rate to be made for reimbursing him; which rate so made, and confirmed by two justices, shall be collected and levied by the surveyor, by distress; who shall within one month after confirming the rate pay the same to such inhabitant. 3 W. c. 12. \int . 14.

3. And if any fine shall be misapplied by any person, he shall on conviction thereof at the special sessions, by proof upon oath, forfeit 5 l. to the informer, by distress. I G. fl. 2. c. 52. s. 5.

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XXXI. Surveyor's account.

The surveyor before he shall be discharged from his office, shall at some special sessions give an account upon oath of all money that has come to his hands, which ought to be employed in amending of the highways, and how he hath disposed thereof; and if any shall remain in his hands, he shall deliver the same to his successor, and in case of failure, he shall forfeit double value of what shall be adjudged to be in his hands by the faid justices, to be levied by diffress, by warrant of two justices of the division, and in default thereof, of any neighbouring justices, and to be disposed of half to the informer, and half to the repair of the highways. 3 W. c. 12. f. 9.

For which account or oath no fee shall be taken. A. 2. c. 52. f. II.

XXXII. Appeal.

1. If any person is aggrieved with any assessment, or other act by the justices, done on the statute of 3 W. c. 12. he may appeal to the fessions, whose order therein shall bind all parties. f. 19.

2. And persons aggrieved by any thing done on the act of 1 G. ft. 2. c. 52. (except those who shall neglect to fcour their ditches, and carry away the earth taken out of them, or who shall not carry away stone, timber, straw, or dung left in the highways, or who shall not remove any other annoyances by watercourses) may appeal to the next feffions, whose order shall conclude and bind all persons.

3. Other appeals, where the law admits of them, are annexed to the particular offences.

XXXIII. Certiorari.

By the 22 C. 2. c. 12. it is provided, that no prefentment or indictment for the defect of repairs of highways, shall be removed by certiorari or otherwise, till after traverse and judgment. J. 4.

And by the statute of the 3 W. c. 12. No prefentment, indictment, or order made upon that act, shall be removed at all by certiorari, into any other court.

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But by the 5 W. c. 11. If the right or title to repair come in question, a certiorari (upon affidavit made of the truth thereof) may be granted to remove the same into the king's bench; provided that the party profecuting the certiorari, shall (before the allowance thereof) find two manucaptors who shall enter into recognizance of 20 l. before a justice of the peace, that he shall at his own costs and charges procure the issue to be tried at the next affizes.

as in the case of other certioraries. s. 6.

And it hath been resolved, that if the quarter sessions, under pretence of the jurisdiction given them by these statutes, take upon them to do a thing manifestly exceeding their authority, as to make an order on furveyors to make up their accounts before a special seffions, their proceedings may be removed by certiorari into the king's bench, and there quashed; for the quarter feffions have no manner of power given them, to intermeddle originally with fuch accounts, but only by way of appeal. I Haw. 218.

And, M. 3 G. 2. K. and Greenhaw. A certiorari, for the like reason, was granted to remove an indictment for not doing the statute labour; for the statute hath appointed another method of proceeding against such of-

fender, and not by indictment. Str. 849.

M. 6 G. 2. K. and Eckershall. An order was made on the 7 & 8 W. c. 29. for the parish at large to repair the highways, the 6d. in the pound levied on the township not being sufficient. And a certiorari being moved for it was objected, that the 3 W. c. 12. had taken it away. To which it was answered, that this is an order founded on a subsequent law. But by the court, They must both be taken together: the rate must be made in aid of the township, by virtue of the former law. So a certiorari

was denied. Str. 944.

E. 4 G. 2. K. and the inhabitants of Hamworth. Upon motion to quash a certiorari to remove an indicament against the defendants at sessions, for not repairing a bridge; it was infifted, that by the 1 An. c. 18. the certiorari is taken away. To which it was answered, and resolved by the court, that his act extended only to bridges where the county is charged to repair; and that where a private person or parish is charged, and the right will come in question, the 5 W. c. 11. had allowed the granting a certiorari. And therefore they refused to quash. Str. 900.

Dighways.

E. 17 G. 2. K. and Farewell. The profecutor of an indictment for a nusance in the highway, took out a certiorari; and the defendant moved to quash it, there being no affidavit made according to the 5 W. c. 11. nor any recognizance given according to former statutes concerning certioraries. But the court; on confidering these acts, held, that they related only to certioraries applied for by defendants, and not to one for the king, as this was. And many precedents were shewed of certioraries for a prosecufor taken out in the manner this was. And the certiorari was allowed. Str. 1200.

XXXIV. Turnpikes.

After having first premised, that by the 28 G. 2. c. 17. it is provided, that every profecutor or informer may fue for any forfeiture or penalty imposed by any act relating to turnpike roads, in the manner directed by such act, or in any of the courts at Westminster in manner following, viz. if it is a pecuniary penalty, by action of debt, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the fum of - being forfeited by an act intituled, An act to amend an act made in the 26th year of the reign of his present majesty, intituled, An act for the amendment and preservation of the publick highways and turnpike roads of this kingdom; and for the more effectual execution of the laws relating thereto; and if it is a horse, beast, or other goods, by an action of trover, in which the value thereof shall be given in damages, without any proof of any feizure or demand: But only that there shall be one recovery for one offence bona fide; and no action by this act to be brought in the courts at Westminster, but in fix months: f. 15, 16. It is judged proper under this head (which is at length become not a little perplexed) to proceed in the following manner.

Qualification of

1. No person shall be qualified to act as a turnpike truturapiketrustees, stee, unless he shall be in his own right, or in right of his wife, in the actual possession or receipt of the rents and profits of lands of the clear yearly value of 401. or poffeffed of or intitled to personal estate alone, or real and personal estate together, to the value of 8001. or shall be heir apparent of a person possessed of an estate in land of the clear yearly value of 801. and unless he shall (not being fuch heir apparent) before he acts as trustee, take and subscribe the oath following before two trustees, viz. I A. B. do fwear, that I truly and bona fide am in my own

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right, or in right of my wife, in the actual poffession and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of 401. or possessed of, or entitled to a personal estate alone, or real and personal estate together, to the value of 8001. So help me god. And if any person shall act contrary hereto, he shall forfeit 501. to him who shall sue. 28 G. 2.

Note; This is one general qualification for all turnpike trustees. By the several particular turnpike acts, other qualifications are usually appointed, all which shall stand, where the estate is limited above what is here directed; only this clause provides, that no turnpike trustee whatsoever shall have less estate than is here

limited.

2. If the trustees shall neglect to meet on the day Meetings how appointed for their first meeting, or on any day ap- to be kept up. pointed by adjournment for their meeting, or for want of a proper adjournment; two truftees, or their clerk, may cause notice in writing to be affixed on all the turnpikes on the respective roads, or if none be then erected, then in the most conspicuous place in one of the principal towns nearest to which the roads lie, at least ten days before the intended meeting, appointing the trustees to meet where the preceding meeting was appointed to have been held, or at the place directed for the first meeting, if no preceding meeting hath been held. 5 G. 3. c. 38. f. 5.

3. No person keeping a victualling house, alehouse, or Alehousekeepers other house of publick entertainmennt, shall be capable not to be turnof any place of trust or profit under turnpike trustees, or

of farming the tolls. 26 G. 2. c. 30. f. 20.

4. If the truftees shall erect or continue any turnpike- Erecting a turngate, where they have no power fo to do; the justices in out lawful sessions, on complaint thereof, may finally determine the power. fame in a summary way, and order the sheriff to remove

it. 5 G. 2. c. 33. f. 4. 8 G. 2. c. 20. f. 17.

5. By the 8 G. 2. c. 20. If any person shall either by Pulling down turnpike gates. day or night, wilfully or maliciously pull down, cut down, pluck up, throw down, level, or otherwise destroy any turnpike gate, post, rail, wall, chain, bar, or other fence, belonging to any turnpike-gate, or any other chain, bar, or fence fet up to prevent passengers from passing by without paying toll, or any house erected for the use of any turnpike-gate, or forcibly rescue any person in custody for

any the said offences, he shall be guilty of felony without benefit of clergy. f. 1.

And the faid offences may be tried in any adjacent coun-

ty. J. 3.

And by the 5 G. 2. c. 33. which made the like offences felony and transportation, the charges of profecution shall be paid out of the tolls.

But the attainder shall not work corruption of blood, nor forfeiture of lands or goods. 8 G. 2. c. 20. f. 4.

And if any person, guilty of any the said offences, and being out of prison, shall discover and cause to be apprehended, one or more persons who shall have committed any of the said selonies, so as he shall be convicted, he shall have a pardon. s. 5.

And the hundred shall answer damages, not exceeding 201. as in cases of robbery; to be sued for in the name of the clerk of the peace, without naming him; the said da-

mages to be applied as the tolls are. f. 6, 8.

But if an offender is convicted in 12 months, the hundred shall not be liable, but if they have paid such damages, the same shall be repaid to them out of the tolls.

Also no action for such damages shall be brought, unless information on oath be made thereof within fix days,

before a justice in or near the hundred. f. g.

Nor unless the fuit be commenced in fix months. f. 10.

6. If any person shall affault or threaten the collector of the toll, or forcibly pass through without paying toll, or shall forcibly carry away or detain him so as he shall not be able to return to his duty for three days; he shall, on conviction (after summons) by oath of one witness, before two justices near the division, forfeit 51. by warrant of the said justices, by distress; for want of distress, to be committed by them to gaol for six months, unless he shall be sooner discharged by the quarter sessions; and for the second or third offence, he shall forseit 101. in like manner, and for want of distress shall be imprisoned for a year, and before he is discharged shall give security at the general quarter sessions for his behaviour for seven years.

And the collector of the toll may seize and detain any person guilty of the offences before mentioned, and carry him belore a justice without a warrant; who shall bind him over to appear at the next petty sessions for the division, or commit him till he finds security to appear. f. 12.

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But persons aggrieved by any order of two justices as aforesaid, may appeal to the next general quarter sessions; and if the court shall think that reasonable time of notice was not given, they may adjourn the appeal to the next quarter sessions; and may award costs to either party.

And no certiorari shall be granted to remove any thing on this act, out of the county, into any other court.

f. 16.

And if an action is brought against any on this act, it shall be laid in the proper county; and the defendant, if

he recovers, shall have treble costs. f. 18.

7. By the 26 G. 2. c. 30. It shall not be lawful, for Breadth of the any waggon, wain, cart, or wheel carriage, to be drawn wheels on turn-pike road, unless the fellies of the wheels be the number of nine inches broad, on pain that the owner thereof shall horses or beats forseit 51. half to him who shall inform and sue, and half of draught. to the trustees for repairing the turnpike road; to be recovered in the courts at Westminster with treble costs; or before two justices where the offence shall be committed, in the manner therein directed: or otherwise to forseit one of the horses drawing the same. f. 1, 2, 13, 16, 17.

And if any person shall drive with wheels of less gage, the constable, or surveyor of the highways, or any other inhabitant of the parish or place where the offence shall be committed, and the surveyor of the turnpike, or any person appointed by five trustees, may apprehend and take such driver before a justice; and on conviction by confession, or oath of one witness, he shall forfeit 51, and if he have no goods whereon immediate distress may be had, the justice may commit him to the house of correction for one month, or till paid. f. 14.

for one month, or till paid. f. 14.

By the wheel being nine inches broad is to be underflood, that the fole or bottom of the fellies shall be nine inches broad, from side to side, at the least, and slat and even from side to side, as near as may be. 28 G. 2.

c. 17. f. 5.

And any two turnpike trustees, by writing under their hands, may order the fellies to be measured at the turnpike gate; and if any person shall attempt to obstruct the measuring thereof, he shall forseit 101. in like manner. 26 G. 2. c. 30. s. 11, 13.

But if it shall appear that the fellies when first made were of nine inches, and are narrowed by wearing, no penalty shall be incurred if they measure full eight inches.

And

f. 12.

highways.

And no waggon having the fellies nine inches broad, shall pass on any turnpike road, which shall be wider than five feet six inches from the middle of the fellies of the wheels on one side, to the middle of the fellies of the wheels on the other side of such waggon; and the surveyor or gatekeeper shall measure the same: and if any master or driver shall hinder or refuse to permit such surveyor or gatekeeper to measure the same; it shall be unlawful for such waggon to pass along any turnpike road. 30 G. 2. c. 28. s. 11.

But by the 28 G. 2. c. 17. Any waggon, wain, or other four wheel carriage, not having the fellies nine inches broad, may pass on any turnpike road, provided it be not drawn by more than six oxen or neat cattle in pairs, and two horses; or eight oxen in pairs, with one horse: And any cart or other two wheel carriage, not having the fellies of the breadth aforesaid, may pass, provided it be not drawn by more than six oxen or neat cattle in pairs, and one horse; or sour oxen in pairs, and two horses. so

And by the 30 G. 2. c. 28. for the space of seven years (from June 24. 1765. 5 G. 3. c. 38.) it shall not be lawful for any waggon or wain, having the sellies less than nine inches broad, to pass upon any turnpike road, or through any turnpike gate, if the same be drawn by horses or beatts of draught in pairs, and not by oxen. s. 7.

But fifb carriages may travel on any turnpike road, with any number of horses in pairs not exceeding four, or by any single horse, or by any number of horses in length not exceeding three, altho' the fellies be not nine inches broad; and shall only pay toll as chaises with a like number of horses: and for horses which have carried the same, no toll shall be paid on their return. 2 G. 3. c. 15. s. 6. 8.

Toll diminished on account of broad wheels. 8. The trustees shall, during the term of seven years from June 24. 1765. Suffer all waggons and wains, having the axle trees thereof of such different lengths, that the distance from wheel to wheel of one pair of the said wheels be not more than four foot two inches, to be measured at the ground; and that the distance from wheel to wheel of the other pair thereof be such, that the fore and hind wheels of such waggons and wains shall roll a surface of at least sixteen inches wide on each side of the said waggons or wains; and having the sellies of the wheels thereof of the breadth of nine inches from side to side, at the bottom or sole thereof;—to pass upon any turnpike road, and thro' any toll gate, on paying only so much of

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the tolls, as shall not exceed one half of the full tolls payable for waggons or wains having the fellies of the wheels nine inches broad, and not rolling a furface of fixteen inches. 5 G. 3. c. 38. f. 3. [But other broad wheeled waggons and wains shall pay to the full.]

9. To prevent the tolls being diminished by the ex- Other tolls inemption of broad wheels, it is enacted by the 30 G. 2. creafed, or the c. 28. that for feven years (from June 24. 1765. 5 G. 3. longed, for the c. 38.) shall be taken for every waggon, wain, cart, or incouragement of carriage, having the fellies less than nine inches broad, broad wheels, or for the horses or beasts drawing the same, one half more than the tolls payable for the same respectively by any act for making or repairing turnpike roads. f. 1.

Provided, that nothing in this act shall extend to carts or carriages drawn by one horse, or two oxen, and no

more. f. 2.

And provided that during the term aforesaid, carts or carriages drawn by two horses or four oxen, and no more, having the fellies of the wheels fix inches broad, may pass

on paying the usual tolls. f. 3.

And during the faid seven years, it shall not be lawful for any waggon or wain, having the fellies nine inches broad, to pass upon any turnpike road or through any turnpike gate, unless the same be drawn by horses or beasts in pairs; provided that where there is an odd horse or beaft, it shall be lawful for the same to draw together with the others drawing in pairs; provided that they do not exceed the whole number of horses or beasts of draught

allowed by law. f. 6.

And if any person shall, during the said seven years, drive or cause to be driven on any turnpike road, any common stage waggon prohibited by this act to pass along any turnpike road; or shall drive or cause to be driven any carriage on any turnpike road, with any greater number of horses or beasts than is allowed by law, or in any wise contrary to the true intent and meaning of this act; every person so offending, and every master or owner of such waggon, wain, cart or carriage fo driven, shall be deemed to be guilty of a common nusance and misdemeanor, and shall be punished for the same by indictment or information; or shall, at the election of the prosecutor, be subject to the same penalties and forfeitures, as the owners of waggons and carriages having the fellies less than nine inches broad are subject to by the 26 G. 2. c. 30. to be levied and applied as therein mentioned. f. 8.

Dighways.

And by the 28 G. 2. c. 17. that the faid lessening of the tolls may not be prejudicial to persons who have lent money on the tolls; every turnpike act made this fession of parliament or before, shall continue for five years from its expiration. J. 4.

Weighing en-gines, with the additional toll

10. By the 14 G. 2. c. 28. The turnpike truffees, or any five of them, may cause to be erected (on any part of for over weight, the turnpike road, 21 G. 2. c. 28. f. 1.) a crane, or engine, for the weighing of carts, waggons, or other carriages, for the conveying of goods; and by writing figned by them, may order such carriages which pass through fuch gate (except as hereafter excepted) to be weighed with their loading; and impower any person to take, over and above the other toll, 20 s. for every hundred weight above 60, to be levied as the other tolls. f. 1, 3.

But this shall not extend to carts, waggons, or other carriages, imployed only about husbandry, or carrying of only cheefe, butter, hay, straw, corn unthrashed, or chalk, or any one stone, block of marble, or piece of timber, nor to caravans, or the covered carriages of noblemen and gentlemen for their private use, or such timber, ammunition, or artillery, as shall be for his majesty's service.

Also it shall notwithstanding, be lawful for any carriage loaden with or carrying one tree or piece of timber, or one stone, or block of marble only, having the fellies of the wheels nine inches broad, to pass on any turnpike road with any number of horses or beasts; without being liable to be weighed, or to pay the additional toll of 20 s.

26 G. 2. c. 30. f. 4.

And if any person shall hinder, or attempt to hinder, the weighing, or feizing any diffress for such additional toll, or shall refcue the same, or use any violence to any person concerned in such weighing or seizure; he shall, on oath of one witness, before one justice where the offence shall be committed, or the offender shall dwell, be committed to gaol for three months, and forfeit 10 I. by diffress; and if not paid in three days, to be fold. G. 2. c. 42. f. 4.

And by the 5 G. 3. c. 38. The trustees, or any five of them, may at the respective gates, or any other convenient place upon the road, during the term of feven years from June 24. 1765. cause to be erected, if they think fit, any crane or engine for weighing of carriages, and by writing figned by them may order any carriages to be weighed, except waggons and wains, the fore and hind

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wheels of which shall roll a surface of at least fixteen inches wide on each fide; and may take, over and above the toll, 20 s. for every hundred weight which fuch waggon shall weigh above fix ton, and 20 s. for every hundred weight which fuch cart or other carriage shall weigh above three ton. 1. 6.

11. If any person shall unload any goods, before the Unloading goods fame shall come to the weighing engine, in order to avoid to avoid the toll. paying the 20 s. or shall after it has passed the engine, load thereon any goods taken from any horse or other carriage belonging to fuch waggoner, he shall forfeit 20 l.

in like manner as above. 21 G. 2. c. 28. f. 2.

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And more generally, by the 28 G. 2. c. 17. If any person shall unload any goods from any carriage before they come to the turnpike gate, in order to avoid payment of the toll; fuch person, being the owner, on conviction before three trustees or one justice, on the oath of one witness, shall forfeit 51; if not forthwith paid, to be levied by diffrefs, rendering the overplus on demand, after deducting the reasonable charges of making the dlstress and sale, to be settled by such trustees or justice: and every driver offending, shall on like conviction be committed to the house of correction for one month. f. 7.

12. And no waggon, or other carriage, travelling for Waggon turned hire, upon any turnpike road, shall be turned out of the out of the road to avoid the fame, into any of the roads adjacent not being turnpike, tolls, in order to avoid, and thereby avoiding paying the tolls; on pain of forfeiting any one of the horses drawing (not being the thill or shaft horse) with all his geers and accoutrements, to the fole benefit of any person who shall feize the same; and the person making such distress, shall proceed in like manner, and be intitled to the like remedies, as is before directed in cases of seizures of horses, by the statute of the 5 G. c. 12. 24 G. 2. c. 43. s. 4.

13. If any owner of any waggon, wain, or cart, tra- what infeription velling for hire, shall drive or cause the same to be dri- shall be on the ven, on any turnpike road, not having his christian and waggon. furname and place of abode, in large letters on the tilt or other conspicuous part of such waggon; he shall forfeit as for having the fellies under nine inches broad: and if he shall have any fictitious name thereon, he shall forfeit 50 l. to be recovered in the courts at Westminster, or before two justices as is aforesaid. 26 G. 2. c. 30. s. 15.

And moreover, every owner of a common stage waggon, or cart, having the fellies under nine inches or fix inches, shall over and above cause to be painted on the

Dighways.

tilt of such as hath a tilt, otherwise on the most conspicuous part, the following words in large and legible characters [COMMON STAGE WAGGON or CART] on pain of forfeiting one of the horses or beafts (not being the shaft or thill horse) with the accourrements, to him who shall seize the same; the seizor to have like remedy as before is specified in the case of drawing with wheels under nine inches broad, by the 26 G. 2. c. 30. f. 2, 13. 28 G. 2. c. 17. f. 14.

And by the 30 G. 2. c. 28. f. 13. Every waggon, wain, cart, or carriage, travelling with or carrying goods for hire, shall be deemed a common stage waggon, within the

faid statute of the 28 G. 2. c. 17.

Rubbish left en the road.

14. If the surveyor shall suffer to be or remain, for 48 hours, in any part of the road, within 12 feet on either fide of the middle of fuch road, any post, heap of stones, rubbish, or earth, whereby the road may be impeded; he shall forfeit to the informer 40 s. to be recovered before one justice, whether such justice be or be not a trustee of fuch road, to be levied by diffress. Persons aggrieved may appeal to the fessions; who may allow costs, not exceeding 40 s, to either party: in which case no certiorari shall lie. 5 G. 3. c. 38. f. 4.

Hedge or ploughing too near the

15. If any person shall make or cause to be made any hedge or other fence, on any turnpike road not inclosed on both fides, within the diffance of 30 feet from the middle of the road; the trustees, or five of them, may cause such hedge or fence to be taken down at the expence of the person to whom the same shall belong: And if he fhall not pay the faid expence, the same may be levied by one justice by diffress. 5 G. 3. c. 38. s. 8.

And if any person shall plough or break up the soil of any ground, within the distance of 15 feet from the middle of the road; he shall forseit 40 s: and one justice, on complaint to him made upon oath, may levy the fame

by diffress. id.

Persons aggrieved may appeal to the sessions; who may allow costs to either party, not exceeding 40 s: and no

certiorari shall lie. J. 9.

Profecution how offences against turnpike laws,

16. The turnpike truftees, or five of them, shall apto be ordered for point persons to carry on prosecutions, for offences against any act relating to turnpike roads; and charge the furveyors to be diligent in inquiring after fuch offences; and all turnpike officers shall (on pain of removal and disability) as often as any offence shall come to their knowledge, give immediate notice to a truffee, who shall forth-

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with procure a meeting of the trustees or five of them, who shall give immediate directions for the prosecution. 26 G. 2. c. 30. f. 18, 19.

Provided, that they shall not be obliged to prosecute, unless on confession of the offender, or unless one witness can be produced to prove the offence. f. 22.

And the truftees, or five of them, shall out of the tolls pay to the prosecutor, so much as the costs allowed by law shall fall short of reimbursing him his reasonable ex-

And every turnpike surveyor and toll gatherer, and all such persons imployed by the trustees as receive salaries, who shall wilfully neglect to seize any supernumerary horse drawing contrary to the acts of the 26 G. 2. c. 30. and 28 G. 2. c. 17. and to lay such information upon oath before a justice, or before the trustees at their meetings, as by the said act of the 26 G. 2. is directed,—shall upon information on oath before one justice, forfeit 101. half to

the informer, and half to repairing the roads as the trustees shall think fit. 28 G. 2. c. 17. s. 17.

And to prevent fraudulent feizures to evade the penalties, it shall be lawful for all courts, and every justice of the peace before whom any proceeding shall be, for any penalty or forfeiture inslicted by any act for repairing turnpike roads, or any way concerning the same, and they are required, where any prior seizure, action, information, or conviction shall be set up by way of defence,—to examine into the real merits thereof; and if it shall appear that the same was not done to recover such penalty or forseiture for the real purposes for which they were enacted, but to savour the offender, such prior proceeding shall be deemed fraudulent and void; and such court or justice shall proceed as if no such prior proceeding had been. 28 G. 2. c. 17. s. 12.

And by the 5 G. 3. c. 38. The trustees, or five of them, may direct profecutions by indictment for any nufance upon the turnpike road, at the expence of the tolls.

f. 10.

17. The constable shall execute all warrants on the Constable to exeact of the 8 G. 2. c. 20. abovementioned, and on any cute the warrants former act concerning turnpikes; on pain of 51. to be of the trustees, levied by distress, by warrant of two justices directed to the high constable, in like manner as the penalties for asfaulting the collector of the toll. 8 G. 2. c. 20. f. 13.

HAVING thus gone through the great number of laws relating to the highways, I shall add one observation upon the whole, which is this; -Notwithstanding that the wisdom of the nation hath been employed for above 200 years in redreffing the great evil of bad roads, yet excepting where turnpikes have been erected, the roads are as bad now, as they were in the days of Philip and Mary. And the misfortune is this; although the laws have provided that the surveyors shall be chosen out of the more fubstantial inhabitants, yet when that is done, scarce one of them in 500 knows how to make a good road, and if he does, his power continues in effect but for fix days; and his fuccessor probably hath other schemes and notions, and the road is never the better. Hence it is, that when the people affemble to repair the highways (if indeed they do affemble), they fpend their time in diverfions, and making bargains, and other idle amusements. And why should they not? They may as well meet and do nothing, as work hard, and to no purpose. And from fo many years experience, the case will never be otherwife, unless the justices of the peace, or others (in like manner as the turnpike truftees,) shall have power given to them by act of parliament, to appoint general furveyors, within proper districts, with falaries, to lay out the roads, and attend and direct the work, and fee the statute labour well performed. And this may be effected without any new affestment or charge; half the prefent affeffment of 6 d. in the pound, or even less than half, would be fufficient in many places both to find falaries, and to widen and purchase roads where needful. And the people, when they should find the benefit of their labour, would work with chearfulness,

A. Warrant

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they Hal A. Warrant for the returning new surveyors; on 3 W. c. 12. f. 3, 9.

Westmorland. { To Edward Cooke, gentleman, high conftable of Lonsdale ward within the faid county.

BY virtue of the statute in that behalf made, we—of his majesty's justices of the peace for the said county, do hereby require you forthwith to issue your warrants to all the petty constables within your said ward in the form or to the effect following; that is to say,

Westmorland, To the constable of—

BY virtue of a precept from his majesty's justices of the peace acting in and for the said ward within the said county, at their special sessions for the highways within the faid ward affembled, you are hereby required to give due notice to the churchwardens, surveyors of the highways and other inhabitants, within your parish, that they do affemble together with you the said constable on the 26th day of December next, and make a list of the names of a competent number of the inhabitants within your said parish, who have an estate in lands, tenements, or hereditaments in their own right or of their wives, of the yearly value of 10 l. or a personal estate of the value of 1001. or are occupiers or tenants of houses, lands, tenements, or hereditaments of the yearly value of 301. if any such there be; or if there be no such persons in your said parish, then the said lift to be of the most sufficient inhabitants within your said parish: With which said list you are personally to appear before the said justices at their special sessions to be holden at—within the said ward in the county afore-faid, on the—day of—now next insuing, at the hour of --- in the forenoon of the same day; that out of the said list the said justices then and there may nominate and appoint fuch persons to be surveyors of the highways within your said parish for the year then next insuing, as they the said justices shall think fit and approve of. [And you are likewise to give notice to the present surveyors, that they do appear at the same time and place, and give an account upon oath before the said justices, of all money that hath come to their hands, which ought to be imployed in amending of the highways, and how they have disposed of the same.] Given under my hand at Hall Beck in the said county, the -day of-

> Edward Cooke, High constable.

And this you the faid high constable are in no wife to omit, on the peril that shall insue thereof. Given under our hands and seals at our special sessions at——in the said county, the——day of——in the——year of the reign of——.

B. Appointment of the surveyor.

Westmorland, Lonsdale ward.

At a special sessions of the peace for the faid ward, held at——in the said ward, within the county aforesaid, the ——day of——in the——year of the reign of——by and before—esquires, justices assigned to keep the peace of our said lord the king in the said county:

W E the said justices do hereby nominate and appoint A. S. of — in the parish of — in the county aforesaid yeoman, to be surveyor of the highways within the said parish, [or, within the township of — within the said parish,] for one whole year next insuing the date hereof, and until be shall have given an account of his receipts and disbursements and other matters relating to his said office, according to law. Given under our hands and seals the day and year first abovewritten.

C. Information of the default of labourers; on the 2 & 3 P. & M. c. 8. f. 2. 22 C. 2. c. 12. f. 9 & 1 G. ft. 2. c. 52. f. 2.

BE it remembred, that this—day

of—A. S. furveyor of the highways of the parish of—in the said county, complaineth
and maketh oath, that A. O. of the parish aforesaid in the
county aforesaid, labourer, being a person able to labour, and
being no hired servant by the year, so being an housholder, or
cottager, as the case shall be was duly summoned by him the
said A. S. by himself or one sufficient labourer, to work and
travel, on the—day of—now last past in the
amendment of the bighways at—in the parish aforesaid
in the county aforesaid, but that he the said A. O. did neglest and make default, and did not by himself nor by one sufficient labourer, work and travel on the said—day of
—in the amendment of the said highways as aforesaid.

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faid in the cuf other n Or if he is a person liable to find a wain or cart, then say,—that A. O. of—yeoman, occupying a ploughland in tillage (or pasture) in the said parish (or as the case shall be;) was duly summoned by him the said A. S. to sind and send; on the—day of—now last pass, to work and travel in the highways at—in the parish aforesaid in the county aforesaid, one wain or cart furnished after the custom of the country with oxen, horses, or other cattle, and other necessaries, meet to carry things convenient for that purpose, and also two able men with the same; but that he the said A. O. his duty in that behalf not regarding, did neglect and make default, and did not find and send one wain or cart furnished as aforesaid with two able men as aforesaid, to work and travel on the said—day of—in the amendment of the said highways as aforesaid. A. S.

Taken in writing and upon oath before us—two of his majesty's justices of the peace for the said county, at our special sessions for the amendment of the highways holden at—in the said county, the—day of—aforesaid in the year aforesaid.

J. P. K. P.

D. Summons on the aforegoing information.

Westmorland. To the constable of

THEREAS complaint in writing and upon oath bath this day of in the year been made before us—two of his majesty's justices of the peace for the faid county, at our special sessions for the amendment of the highways holden at ____ in the faid county, by A. S. furveyor of the highways of the parish of ____in the said county, that A. O. of yeoman, occupying a ploughland in tillage (or pasture) in the said parish, (or keeping a draught or plough in the faid parish, or as the case shall be;) was duly summoned by him the faid A. S. to find and send on the - day of --- now last past, to work and travel in the amendment of the highways at --- in the parish afore-Jaid in the county aforesaid, one wain or cart furnished after the custom of the country with oxen, horses, or other cattle, and other necessaries, meet to carry things convenient for that purpose, and also two able men with the same; but that he the

faid A.O. did neglect and make default, and did not find and send one wain or eart furnished as aforesaid with two able men as aforesaid, to work and travel on the said—day of—in the amendment of the said highways as aforesaid: These are therefore to command you forthwith to summon the said A.O. to appear before us at our special sessions for the amendment of the highways to be holden at—in the said county, on—the—day of—at the hour of—to answer unto the said complaint; And also that you do summon A.W. of—then and there to appear and testify before us his knowledge concerning the premisses. And be you then there to certify what you shall have done in the execution hereof. Herein fail you not. Given under our hands and seals the—day of—aforesaid, in the year aforesaid.

E. Warrant of distress thereupon.

Westmorland. { To the constable of--

WHEREAS A. O. of ____ in the county aforefaid, yeoman, is duly convicted before us-two of his majesty's justices of the peace for the said county, by the oath of A. W. a credible witness, for that he the said A. O. occupying a ploughland in tillage (or pasture) in the said parish [or, keeping a draught or plough in the faid parish, or otherwise as the case shall be] was duly summoned by A. S. surveyor of the highways of the parish of——in the said county, to find and send on the——day of——now last past, to work and travel in the amendment of the highways at --- in the parish aforesaid in the county aforesaid, one wain or cart furnished after the custom of the country with oxen, horses, or other cattle, and other necessaries meet to carry things convenient for that purpose, and also two able men with the same; but that he the said A. O. did neglect and make default, and did not find and fend one wain or cart furnished as aforesaid, with two able men as aforesaid, to work and travel on the said - day of - in the amendment of the said highways as aforesaid, whereby he hath forfeited the sum of 10 s. These are therefore in his said majesty's name to command you, to levy the said sum by distress of the goods of him the said A. O. And if within the space of [five] days next after such distress by you taken, the said sum of 10s. together with reasonable charges of taking and keeping the said distress shall not be paid; that then you do fell the faid goods fo by you distrained as aforesaid,

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Or, faid co faid be often a aforesaid, and out of the money, arising by such sale, that you do pay the said sum of 10s. to him the said A. S. to be by him imployed for and towards the repairing of the highways in the parish aforesaid; returning to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted: Herein fail you not. Given under our hands and seals at our special sessions for the amendment of the highways, holden at——in the said county the——day of——in the——year of——.

F. Indictment for not repairing a common highway.

Westmorland. THE jurors for our lord the king upon their oath present, that from the time whereof the memory of man is not to the contrary, there was, and yet is a common and ancient king's highway leading from the town of——in the county of——towards and unto the market town of——in the county of——, used for all the liege subjects of our said lord the king, and of his predecessors, with their horses, coaches, carts, and carriages to go, return, pass, ride, and labour at their will and pleasure, and that a certain part of the same king's common highway calledsituate, lying and being in the parish of --- in the county of -aforesaid, containing in length-feet, and in breadth -feet, on the-day of-in the-year of the reign of - and continually afterwards, until the day of the taking of this inquisition, was and yet is in great decay, for the want of due reparation and amendment of the same; so that the subjects of our said lord the king, passing and travelling through the same, with their horses, coaches, carts and carriages, could not during the time aforefaid, nor yet can go, return, pass, ride, and labour without great danger; to the great damage and common nusance of all the liege subjects of our faid lord the king, passing through that way, and against the peace of our faid lord the king, his crown and dignity; And that A. O. of -aforefaid, gentleman, ought by reason of the tenure of his lands and tenements, situate, lying and being at ___ aforesaid in the county aforesaid, to repair and amend the said highway, when and so often as it shall be neceffary.

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Or, that the inhabitants of the said parish of——in the said county of——the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary.

Indictment for not repairing an ancient horse and foot way.

Westmorland. THE jurers for our lord the king upon their oath present, that from the time of which the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from _____ in the county of _____ to ____ in the county of - for all the liege subjects of our now lord the king, and his ancestors, on horseback and on foot, to go, return, pass, ride, labour, and drive their cattle at their will, and that a certain part of the same common highway, situate, lying, and being within the parish of —— in the county of ——
aforesaid, containing in length —— feet, and in breadth ——
feet, on the —— day of —— in the —— year of the
reign of —— and continually afterwards, until the day of the taking of this inquisition, at the parish of - aforesaid, in the county aforefaid, was, and yet is, very ruinous, miry, deep, broken, and in such decay, for want of due reparation and amendment of the same, that the liege subjects of our said lord the king, by and through the same way, with their borses and cattle, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour, as they ought and were wont to do, without great danger of themselves and of their goods, to the great damage and common nusance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our faid lord the king. And that the inhabitants of the same parish of --- in the county aforefaid, the same common highway, so as aforesaid being in debay, ought to repair and amend, when, and so often as it shall be necessary.

Indictment for incroaching upon a highway, by building thereupon.

| Westmorland. | HE jurors for our lord the king up their oath present, that A. O. late | pon of |
|--|---|-----------|
| | the day of in the | |
| | force and arms, at in and u | |
| | in a certain place commonly called - | |
| | | |
| there, containing in | length - feet, and in breadth - | _ |
| feet, by him the fa | nid A. O. erected and built, bath unla | w- |
| All Cal | | ully |
| there leading from - there, containing in | length — by a certain build length — feet, and in breadth — id A. O. erected and built, hath unla | in |

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fully and unjuftly incroached, and doth yet incroach, and the building aforefaid so as is aforefaid erected and built by him the faid A.O. from the aforefaid———day of———in the year aforefaid, unto the day of exhibiting this information, at ——aforefaid in the county aforefaid, with force and arms, unlawfully and unjuftly hath continued, and doth yet continue, by reason whereof the common highway aforefaid bath become and is greatly straitned, so that the lieges and subjects of the said lord the king upon and through the same common bighway aforefaid, with their horses, carts, and carriages, cannot go, pass, ride, and labour as they ought and were wont to do, to the great and common nusance of all the lieges and subjects of the said lord the king in and through the said common highway going, passing, riding, and labouring, and against the peace of the said lord the king. Trem. 196.

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Indictment for inclosing the highway.

Westmorland. HE jurors for our lord the king upon their oath present, That whereas from the time whereof the memory of man is not to the contrary, it was used, that the liege subjects of our said lord the king had unlawfully used a certain common highway at --the said county, in a certain place there called from the town of - aforesaid, to the town of for themselves and their goods, without any stoppage or hindrance by any ditches, hedges, or other obstacles whatsoever; nevertheless one A. O. of — aforesaid, in the county of -aforesaid, yeoman, on the ---- day of --— year of the reign of — with force and arms -aforesaid, in the county of — foresaid, in the place aforesaid called - upon the common highway aforefaid, a certain ditch and quickfet hedge did cast up, set, and erect, and the faid ditch and quickfet hedge so as is aforesaid cast up, set, and erected, doth yet continue and keep; to the great stoppage and hindrance of the liege subjects of our faid lord the king, passing in and thro' the said common highway, and against the peace of our said lord the king.

Indictment

Indictment for laying timber or other obstructions in the highway.

Westmorland. HE jurors for our lord the king upon their oath present, that A. O. late of — in the county aforesaid, yeoman, on the — day of ____ in the ____ year of the reign of ____ and on divers other days and times as well before as afterwards, with force and arms, at - in the faid county, in and upon the king's common highway there, leading fromunto the town of - divers great pieces of timber put and placed, and caused to be put and placed, and the same great pieces of timber so as aforesaid put and placed from the afore-- day of - in the - year aforesaid, until the day of exhibiting this information, in and upon the king's common highway aforesaid to be, lie, and remain, bath permitted and doth still permit, to the grievous and common nusance of all the lieges and subjects of the said lord the king, upon and through the king's common highway aforesaid going, passing, riding and travelling, and against the peace of our said lord the king, his crown and dignity. Trem. 197.

Or,—great quantity of dung and other filth, by reason whereof divers hurtful and unwholsome smells from the said dung and other filth did then and there arise, and thereby the air there became, was and is corrupted and infected—.

Or, — cart loads of rubbish—by reason whereof the said bighway for the whole time aforesaid was straitned and obstructed, so that the liege subjects of our said lord the king could not so freely pass and repass about their lawful business, through the said common bighway there, as they ought and have been accustomed—.

Indictment for stopping up a watercourse, whereby the highway is overflowed.

Westmorland. THE jurors for our lord the king upon their oath present, that A.O. late of the parish of _____ in the county aforesaid, yeoman, on the _____ day of ____ in the ____ year of the reign of ____ with force and arms, at the parish aforesaid, in the county aforesaid, a certain antient watercourse adjoining to the

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the king's common highway, within the same parish, leading from the town of - in the county aforesaid, towards and unto - with gravel and other materials, unlawfully and injuriously did obstruct and stop up; and the said watercourse, so as aforesaid obstructed and stopped up from the saidday of - in the year aforesaid until the day of the taking of this inquisition, at the parish aforesaid in the county aforesaid, unlawfully and injuriously bath continued and still doth continne, by reason whereof the rain and waters that were wont and ought to flow and pass through the said watercourse, on the same day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain, in the king's common . highway aforesaid, and thereby the same was, and yet is greatly burt and spoiled; so that the liege subjects of our said lord the king, through the same way with their horses, coaches, carts and carriages, then and on the faid other days and times, could not nor yet can go, return, pass, ride, and labour, as they ought, and were wont to do, to the great damage and common nusance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding and labouring, and against the peace of our faid lord the king.

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G. Presentment by a justice on his view.

Westmorland. A T the general quarter sessions of the peace of our lord the king, held for the county of ____aforesaid, at ____in the said county, on monday
the ____day of ____in the ____year of the reign
of ____before ____esquires, and others their companions, justices of our said lord the king assigned to keep the peace in the faid county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, Thomas Carleton, esquire, one of the justices of our faid lord the king, assigned to keep the peace in the faid county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by virtue of the statute in such case made and provided, upon his own proper knowledge doth present, That from the time whereof the memory of man is not to the contrary, there was and yet, is, a certain common and antient king's highway, leading from the town of - in the county of - towards and unto -used for all the liege subjects of our said lord the king and his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour at their

will; and that a certain part of the same king's common wards, until this present day, at the said parish of in the county aforesaid, was and yet is very ruinous, miry, deep, broken and in great decay, for want of due reparation and amendment of the same, so that the liege subjects of our faid lord the king, through the same way, with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour as they ought and were went to do, to the great damage and common nusance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding and labouring, and against the peace of our said lord the king; and that the inhabitants of the parish of ____ aforesaid, in the county aforesaid, the common highway aforefaid (fo as aforefaid being in decay) ought to repair and amend, when and so often as it shall be necessary. In testimony whereof, the said Thomas Carleton, to these presents hath set his hand and seal, this - day of - in the year aforesaid.

Highwaymen. See Robberp.

Domicide.

TOMICIDE in law fignifies the killing of a man

by a man. I Haw. 66.

And it includes in it, not only petit treason, con-cerning which see title Ereason; but also the several offences which are treated of in the following fections.

There is also another kind of untimely death of a man, not properly homicice: when he is killed by a horse, a cart, a tree, or the like, and not by a man; which is called cafual death; for which fee title Deodand.

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I. Justifiable bomicide.

II. Homicide by misadventure.

III. Homicide by felf defence. IV. Manstaughter.
V. Murder.

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VI. Self-murder.

I. Justifiable homicide.

1. To make homicide justifiable, it must be owing to on a real nefome unavoidable necessity, to which the person who kills cessity. another must be reduced, without any manner of fault in himself. I Haw. 69.

And there must be no malice coloured under pretence of necessity; for wherever a person who kills another, acts in truth upon malice, and takes occasion from the appearance of necessity to execute his own private revenge, he is guilty of murder. 1 Haw. 69.

2. If any evil disposed person shall attempt feloniously Killing robbers to rob or murder any person in any dwelling house or high- and burglars. way, or feloniously attempt to break any dwelling house in the night time, and shall happen in such felonious intent to be flain; the flayer shall be discharged, and shall

forfeit no lands nor goods. 24 H. 8. c. 5. 3. If trespassers in a forest, chase, park, or warren, or Trespassers in any inclosed ground wherein deer are kept, will not ren- parks. der themselves to the keepers, upon a hue and cry made to fland to the king's peace, but fly from, or defend themfelves against them, they may be stain by them. I Haw.

4. If rioters, or forcible enterers or detainers, stand in Rioters, opposition to the justices lawful warrant, and any of them is flain; it is no felony. Hale's Pl. 37.

5. If a man comes to burn my house, and I shoot out of Houseburners. my house, or iffue out of my house, and kill him; it is no. felony. Hale's Pl. 39.

6. If a woman kill him that affaulteth to ravish her; it Ravishers.

is no felony. Hale's Pl. 39. 7. If a person having actually committed a felony, will Felons refusing not suffer himself to be arrested, but stand on his own de- to be strested. fence, or fly, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons, or publick officers, with or without a warrant from a VOL. II. magistrate;

Bomicide.

magistrate; he may be lawfully slain by them. I Haw.

Suspected felon refufing to be arrefted.

8. So if a felony hath actually been committed, and an officer or minister of justice, having lawful warrant fo to do, arrest an innocent person, and such person assault the officer or minister of justice; the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but in striving kill him, it is no felony. And in that case, the officer or minister of justice shall forfeit nothing; but the party fo affaulting, or offering to fly away, and is killed, shall forfeit his goods. 3 Inft. 56.

Felon escaping.

o. Also if a person artested for felony, break away from his conductors to gaol, they may kill him, if they cannot otherwise take him. But in this case likewise, there must have been a felony actually committed. Hales's Pl. 36,

Felon breaking

10. Also if a criminal endeavouring to break the gaol, affault his gaoler, he may be lawfully killed by him in the affray. 1 Haw. 71.

Refisting a civil process.

11. In civil causes; Although the sheriff cannot kill a man who flies from the execution of a civil process; yet if he resist the arrest, the sheriff or his officer need not give back, but may kill the affailant, Hale's Pl. 37.

So if in the arrest and striving together, the officer

kill him, it is no felony. Hale's Pl. 37.

charge.

12. In all these cases the party upon arraignment having pleaded not guilty, the special matter must be found; whereupon the party shall be dismissed, without any forfeiture, or pardon purchased. Hale's Pl. 38.

II. Homicide by misadventure.

Chancemedley.

magilizato;

1. I have purposely avoided the word chancemedley in this place, because authors do not seem to be agreed whether it is to be applied to homicide by mifadoenture, or to manslaughter. Ld. Coke and Mr. Hawkins feem to underfland it of manslaughter; Ld. Hale, and others, of homicide by misadventure. The original meaning of the word feems to favour the former opinion, as it fignifies a fudden or cafual meddling or contention; whereas homicide by misadventure supposeth no previous meddling or falling out. But the same author sometimes, in different places, applies it to both of them promiseuously. sithout a wattant from a TO MIN

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2. Homicide by misadventure is, where a man is doing What is homia lawful act, without intent of hurt to another, and death cide by miladcafually enfues. Hale's Pl. 31.

3. As where a labourer being at work with a hatchet, Cafes of homithe head flies off, and kills one who stands by. I Haw. venture,

4. Or where a third person whips a horse, on which a man is riding, whereupon he fprings out, and runs over a child, and kills him; in which case the rider is guilty of homicide by misadventure, and he who gave the blow of manslaughter. 1 Haw. 73.

5. But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide and not by misadventure; and if he ride fo, in a press of people, with intent to do hurt, and the horse killeth another, it is murder in the rider.

I H. H. 476.

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6. If a person drives his cart carelelly, and it runs over a child in the ftreet, if he have feen the child, and yet drives on upon him, it is murder; but if he faw not the child, yet it is manslaughter; but if the child had run cross the way, and the cart ran over the child before it was possible for the carter to make a stop, it is by misad-

venture, 1 H. H. 476.

7. So where workmen throw stones, rubbish, or other things, from an house, in the ordinary course of their business, by which a person underneath happens to be killed; if they look out and give timely warning to those below, it will be homicide by misadventure; if without fuch caution, it will amount to manslaughter at least, it was a lawful act, but done in an improper manner. It is faid by fome, that if this be done in the streets of London, or other populous towns, it will be manslaughter notwithstanding the caution above mentioned. But this will admit of some limitation. If it be done early in the morning, when few or no people are ftirring, and the ordinary caution is used, it seemeth that the party is excufable. But when the streets are full, that will not fuffice; for in the hurry and noise of a crowded street, few people hear the warning, or fufficiently attend to it. Fost. 262, 263.

8. It is faid before, that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. As if a person, meaning to steal a deer, in another man's park, shooteth at the deer, and by the glance of the arrow killeth a boy, that is hid-

Cc 2

den in a bush; this is murder, for that the act was unlawful, altho' he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadven-

ture, and no felony. 3 Inft. 56.

9. So if any one shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is by misadventure; for it was not unlawful to shoot at the wild fowl: But if he had shot at a cock or a hen, or any tame fowl of another man's, and the arrow by mischance had killed a man; if his intention was to steal the poultry (which must be collected from circumstances), it will be murder by reason of that selonious intent; but if it was done wantonly, and without that intention, it will be barely manslaughter. Fost. 258, 9.

10. The rule before laid down supposeth, that the act from which death ensued, was malum in se. For if it was barely malum probibitum, as shooting at game by a person not qualified by statute law to keep or use a gun for that purpose; the case of a person so offending, will fall under the same rule as that of a qualified man. For the statutes prohibiting the destruction of the game, under certain penalties, will not in a question of this kind enhance the accident beyond its intrinsick moment. Fost.

259.

11. Further, if there be an evil intent, tho' that intent extendeth not to death, it is murder. Thus, if a man, knowing that many people are in the flreet, throw a stone over a wall, intending only to fright them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, tho' that intent extended not to death, and tho' he knew not the party slain. 3 Inst. 57.

12. And it is a general rule, in case of all felonies, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits.

1 Haw. 74.

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13. But in all the cases above, if it doth only hurt a man, by such an accident, it is nevertheless a trespass; and the person hurt shall recover his damages; for tho the chance excuse from selony, yet it excuses not from trespass. 1 H. H. 472.

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14. If a person escape that hath killed another by mis-Escape. adventure, the town shall be amerced. 2 Inst. 149.

15. This homicide is not felony, because it is not ac-This kind of companied with a felonious intent, which is necessary in homicide no felony.

15. This homicide is not felony, which is necessary in homicide no felony.

16. But yet a person guilty thereof is not bailable by Bail. justices of the peace, but must be committed to the affizes.

I Haw. 75.

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But if he is taken only on a flight fuspicion, the justices

of the peace may bail him. 2 Haw. 105.

17. Altho' this homicide is not properly a man's crime, Forfeiture. but his misfortune; yet because the king hath lost his subject, and in respect of the great favour the law hath to the life of man, and to the end that men should use all care, diligence, and circumspection in all they do, that no hurt should come of their actions, a person convicted hereof shall forfeit his goods, and shall not presently be discharged of his imprisonment, but bailed, that he may sue out his pardon, which he shall have out of the chancery of course. I H. H. 477, 492. I Haw. 76.

III. Homicide by self defence.

1. Homicide in a man's own defence feems to be, where se defendendo, one who hath no other possible means of preserving his life what. from one who combats with him on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. I Haw. 75.

2. And not only he, who upon an affault retreats to a Cales of & dewall, or some such strait, beyond which he can go no far-fendendo. ther, before he kills the other, is judged by the law to act upon unavoidable necessity; but also he, who being affaulted in such a manner, and in such a place, that he cannot go back without manifestly indangering his life, kills the other without retreating at all. I Haw. 75.

3. And notwithstanding a person who retreats from an assault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide se defendendo only.

1 Haw. 75. 4. But if the mortal wound was first given, then it is

manslaughter. Hale's Pl. 42.

5. And an officer who kills one that resists him in the execution of his office, and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all, 1 Haw. 75.

Cc3

6. But

Homicide.

6. But if a person upon malice prepense strike another, and then fly to the wall, and there in his own defence kills the other, this is murder. Hale's Pl. 42.

Accessaries.

7. Hereof there can be no accellaries, either before of after the fact; because it is not done with a felonious intent, but upon inevitable necessity. 3 Inft. 56.

Escape.

8. If a man escape, that hath killed another in his own defence, the town shall be amerced. 2 Inft. 315.

Bail.

o. A person guilty hereof is not bailable by juffices of the peace; but they must commit him till the affizes. 1 Haw. 76.

But otherwise it is, if he is taken only on flight fuspi-

cion. 2 Haw. 105.

Power of juffices of the peace.

Forfeiture.

Flight.

10. Lord Coke (2 Inft. 316.) fays, that the juffices of the peace cannot take an indictment of killing a man fe defendendo; because their commission is not general, as is that of the juffices of gaol delivery, but limited: But lord

Hate (2 H. H. 46.) holds the contrary.

11. A person convicted hereof, shall not be discharged out of prison but upon bail, and shall forfeit all his goods, altho' the cause was inevitable. And this, because of the great regard which the law hath for the life of man; and alfo, by reason that the law intends it had a beginning upon an unlawful cause: for quarrels are not presumed to grow without fome wrongs in words or deeds, and so malice on both fides. But he shall have his pardon out of

the chancery of course. 3 Inst. 56. 1 Haw. 76. 12. If a man be indicted for homicide fe defendendo, and is found not guilty, yet if it be found that he fled for the fame, he shall forfeit his goods for such flight, in not

flanding to the law of the land. I H. H. 493.

IV. Manslaughter.

Mansaughter, what.

r. By manflaughter is to be understood fuch killing of a man as happens either on a fudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. 1 Haw. 76.

Without malice.

2. There is no difference between murder and manflaughter, but that murder is upon malice forethought, and manslaughter upon a fudden occasion. As if two meet together, and striving for the wall, the one kill the other, this is manslaughter and felony. And so it is, if they had upon that fudden occasion gone into the field and fought, and the one had killed the other, this had been but mansfaughter, and no murder; because all that fol-

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lowed was but a continuance of the first sudden occasion, and the blood was never cooled, till the blow was given.

3 Inst. 55.
3. There can be no accessaries to this offence before Accessaries.

the fact, because it must be done without premeditation.

But there may be accessaries after the fact. 3 Inft. 55. This offence is not bailable by justices of the peace. Bail.

3 Ed. 1. c. 15. . It is within the benefit of clergy; but the offender Clergy.

shall forfeit as in other felonies. 2 H. H. 344.

6. But there is one kind of manslaughter, which by Stabbing, the statute of the 1 7. c. 8. is excluded the benefit of clergy; viz. He who shall stab or thrust any person that hath not then any weapon drawn, or hath not then stricken first, so as the person so stabbed or thrust shall die thereof in fix months, altho' it cannot be proved that the same was done of malice forethought, shall be guilty of felony without benefit of clergy.

V. Murder.

1. Murder is, when a man of found memory, and of Murder, what. the age of discretion, unlawfully killeth any person under the king's peace, with malice forethought, either expressed by the party, or implied by law; so as the party wounded or hurt, die of the wound or hurt, within a year and a day. 3 Inft. 47.

2. By malice expressed, is meant, a deliberate intention Cases of Murder.

of doing any bodily harm to another, whereunto by law

a person is not authorized. 1 H. H. 154.

And the evidences of fuch a malice must arise from external circumstances discovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compassings, and the like; which are various, according to variety of circumstances. 1 H. H. 451.

3. Malice implied is in feveral cases; as when one voluntarily kills another, without any provocation; for in this case the law presumes it to be malicious, and that he is a publick enemy of mankind. 1 H. H. 455, 456.

4. Poisoning also implies malice, because it is an act

of deliberation. 1 H. H. 455.

5. Also when an officer is killed in the execution of his office, it is murder, and the law implies malice. H. H. 457.

6. Also where a prisoner dieth by dures of the gaoler, the law implies malice, by reason of the cruelty. 3

Inft. 52.

7. And in general, any formed defign of doing mifchief may be called malice, and therefore not fuch killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, fuch as is accompanied with those circumstances that shew the heart to be perverfely wicked, is adjudged to be of malice prepense, and consequently murder. 2 Haw. 80. Strange 766. For when the law makes use of the term malice aforethought, as descriptive of the crime of murder, it is not to be understood in that narrow restrained sense to which the modern use of the word malice is apt to lead one, a principle of malevolence to particulars; for the law by the term malice (militia) in this instance meaneth, that the fact hath been attended with fuch circumstances, as are the ordinary symptoms of a wicked heart, regardless of focial duty, and fatally bent upon mischief. Fost. 256, 7.

8. And wherever it appears that a man killed another, it shall be intended prima facie that he did it maliciously, unless he can make out the contrary, by shewing that he did it on a sudden provocation, or the like. I Haw. 82.

9. Also wherever a person in cool blood, by way of revenge, beats another in such a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone so far. 1 Haw. 83:

10. And it feems to be agreed, that no breach of a man's word or promife, no trespass either to lands or goods, no affront by bare words or gestures, however salse or malicious it may be, and aggravated with the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him, in such a manner as manifestly indangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault, whether the person slain did at all sight in his defence or not. I Haw, 82.

11. If a man by harsh and unkind usage put another into such a passion of grief or sear, that the party either die suddenly, or contract some disease whereof he dies, though this may be murder or manslaughter in the sight of god, yet in a human judicature it cannot come under the judgment of selony, because no external act of violence was offered, whereof the law can take notice.

H. H. 429.

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to fight in such a field, and each of them go and fetch their weapon, and go into the field, and therein fight, and the one killeth the other, this is no malice prepensed; for the fetching of the weapon, and going into the field, is but a continuance of the sudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay though it were the same day, if there were such a competent distance of time, that in common presumption, they had time of deliberation, then it is murder. 3 Inst. 51. In H. H. 453.

13. And the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not. And it is holden, that the seconds of the party slain are likewise guilty as accessaries.

1 Haw. 82.

14. If a physician or surgeon gives a person a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a disease, and contrary to the physician or surgeon's expectation it kills him, this is no homicide. And lord Hale says, he holds their opinion, to be erroneous, who think that if he be no licensed surgeon or physician, that occasioneth this mischance, that then it is selony. These opinions (he says) may caution ignorant people not to be too busy in this kind with tampering with physick, but are no safe rule for a judge or jury to go by. I. H. 429.

15. But if a woman be with child, and any gives her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given her to cure her of a disease, but unlawfully to destroy the child within her; and therefore he that gives her a potion to this end, must take the hazard, and if it kills the mother it is murder. 1 H. H. 430.

16. Also if a woman be quick with child, and by a potion or otherwise, killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child, this is a great misprission, but no murder: but if the child be born alive, and dieth of the potion, battery, or other cause, this is murder. 3 Inst. 50.

Lord Hale says, that in this case it cannot legally be known, whether the child were killed or not; and that if the child die, after it is born and baptized, of the stroke

given to the mother, yet it is not homicide, 1 H. H. 437. And Mr. Dalton fays, whether it die within her body, or thortly after her delivery, it maketh no difference. Dalt. 332. But Mr. Hawkins fays, that (in this latter case) it feems clearly to be murder, notwithstanding some opinions to the contrary. I Haw, 80.

17. Also it seems agreed, that where one counsels a woman to kill her child when it shall be born, who afterwards doth kill it in pursuance of such advice, he is an

accessary to the murder. 1 Haw. 80.

18. By the 21 7. c. 27. If a woman be delivered of a bastard child, and she indeavour privately, either by drowning or fecret burying thereof, or any other way, either by herfelf, or the procuring of others, fo to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; she fhall fuffer death as in case of murder, except the can prove by one witness that it was born dead.

19. Lord Hale fays, if a man have a beaft, as a bull, cow, horse, or dog, used to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable

with an action for it:

If he have no particular notice that it did any fuch thing before, yet if it is feræ naturæ, as a lion, a bear, a wolf, yea an ape or a monkey, if it get loose and do harm to any person, the owner is liable to an action for the damage:

If he have notice of the quality of any fuch his beaft, and use all due diligence to keep him up, yet he breaks loofe and kills a man, this is no felony in the owner, but

the beaft is a deedand:

But if he did not use that due diligence, but through negligence the beaft goes abroad, after warning or notice of his condition, and kills a man, he thinks it is manflaughter in the owner:

But if he did purposely let him loose or wander abroad, with defign to do mischief, nay though it were with defign only to fright people and make fport, and it kills a

man, it is murder in the owner. I H. H. 431.

20. They that are present when any man is slain, and do not their best indeavour to apprehend the murderer or manslayer, shall be fined and imprisoned.

21. If a murder be committed in the day time, in a town not inclosed, and the murderer escape, the township shall be amerced: but if inclosed, whether the mur-

Persons present when murder is committed.

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der be in the night or day, the town shall be amerced.

3 Infl. 53.

22. Where any person shall be feloniously stricken or Where the stroke poisoned in one county, and die in another county; the is in one county, and the death in offender may be indicted in the county where the party another. dies, before the coroner, justices of the peace, or other justices. 2 & 3 Ed. 6. c. 24. f. 2.

24. Where a murder is committed in one county, and Where the prina person is accessary in another county, he may be in cipal committeen the offence in dicted in the county where he was accessary, on certifi- one county, and case of the conviction of the principal in the county where the accessary in he committed the murder. 2 & 3 Ed. 6. c. 24.

24. If any person be feloniously stricken or poisoned Where the stroke upon the fea, or out of England, and shall die of the same is in England, and the death out in England; or shall be feloniously stricken or portoned in of England; and England, and shall die of the same on the sea, or out of vice versa. England; the offenders and accessaries may be indicted in the county where any fuch death, stroke, or poisoning shall happen, before the coroner, justices of the peace, or other justices; and the judges of affize, or any superior court, to which the indictment shall be removed, shall proceed thereon accordingly. 2 G. 2. c. 21.

25. If any man be flain or murdered, and the flayers, Trial, when, murderers, and accessaries be indicted, they may be tried at any time within the year, and not tarry the year and day for an appeal: but if upon trial they are acquitted, they shall not be suffered to go at large, but be committed or bailed, till the year and day be paft: and an appeal may be brought, notwithstanding such acquittal on indictment, if he hath not had his clergy. 3 H.

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26. Sentence, in case of murder, shall be pronounced Judgment. in open court immediately after conviction, unless the court shall fee reasonable cause for postponing the same; in which shall be expressed not only the usual judgment of death, but also the time appointed for execution, and the marks of infamy directed for such offenders. 25 G. 2.

c. 37. J. 3. 27. And after conviction and judgment, the gaoler How to be deshall confine the prisoner to some cell, or other proper meaned after and fafe place in the prison, apart from the other priso judgment. ners; and no person, except the gaoler, or his servants, thall have access to him, without a licence from the judge, theriff, or under theriff. But if the judge thall fee cause to respite the execution, he may during the time of such itay, relax, or release, by licence under his hand, any or

all of the restraints or regulations before directed to be

observed by the gaoler. 25 G. 2. c. 37. s. 6, 7.

And after sentence, and until execution, the offender shall be sed with bread and water only (except in case of receiving the sacrament; or of any violent sickness or wound, in which case some known physician, surgeon, or apothecary may be admitted by the gaoler to administer necessaries, his name and place of abode being first entred in the books of such prison). And if the gaoler shall offend against, or neglect to put in execution, any of the said directions; he shall forseit his office, and be sined 20 l. and imprisoned till paid. id. s.

28. The execution of persons sound guilty of wilful murder, shall be on the day next but one after sentence passed, unless it be funday, and in that case on the monday

following. 25 G. 2. c. 37. f. 1.

But if there shall appear reasonable cause, the judge after sentence pronounced, may stay the execution at his

discretion. id. f. 4.

29. And if any person shall by sorce set at liberty or rescue, or attempt to set at liberty, or rescue, any person out of prison, committed for, or found guilty of murder; or rescue, or attempt to rescue any such person going to, or during execution; he shall be guilty of selony without benefit of clergy. 25 G. 2. c. 37. s. 9.

30. The body, if in London or Middlefex, shall be immediately conveyed by the sheriff, to the surgeons hall, or such other place as the surgeons company shall appoint, to be by them dissected and anatomized; and if

elsewhere, shall be delivered to such surgeon as the judge shall direct, for the purpose aforesaid. 25 G. 2. c. 37,

And the judge may direct the body to be hung in chains, or anatomized; but in no case whatsoever to be buried, unless after the same shall have been diffected and

anatomized. J. 5.

At a meeting of the judges to consider of this act, there was some doubt whether hanging in chains might ever be made part of the sentence; but on debate it was agreed by nine judges, that in all cases within the act, the judgment for dissection and anatomizing only should be part of the sentence: and if it should be thought adviseable, the judge might afterwards direct the hanging in chains by special order to the sheriff, pursuant to the power given

by this clause. Fost. 107.

Execution.

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Body not to be buried.

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31. And if after execution, any person shall by force Rescuing the rescue, or attempt to rescue the body; he shall be guilty body. of felony, and transported for seven years. 25 G. 2. c. 37. J. 10.

32. The principal in murder is ousted of clergy in all How far the ac-32. The principal in induct to outled of clergy in all ceffary shall have cases, and the accessary before is also ousted of clergy in all his clergy.

cases, but the accessary after is in no case ousted of clergy.

2 H. H. 344. 33. All voluntary murders, wilful poisonings, and all Pardon. flaughters of forethought felony, are exepted out of the general pardon of the 20 G. 2. c. 52.

34. All murders committed by any person in the fleet Navy. shall be punished with death, by the sentence of a court

martial. 22 G. 2. c. 33. art. 28.

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VI. Self-murder.

1. A felo de se, or felon of himself, is a person, who be- Felo de se. ing of found mind, and of the age of discretion, voluntarily killeth himself. 3 Inst. 54. I H. H. 411.

2. If a man give himself a wound, intending to be felo Year and day.

de se, and dieth not within the year and day after the wound, he is not felo de se. 3 Init. 54.

3. Mr. Hawkins speaks with some warmth against an Non compose. unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himself must be non compos of course; because it is said to be impossible, that a man in his fenses should do a thing so contrary to nature, and all sense and reason. But he argues, that if this doctrine were allowable, it might be applied in excuse of many other crimes as well as this; as for instance that of a mother murdering her child, which is also against nature and reason: and this consideration, instead of being the highest aggravation of a crime, would make it no crime at all; for it is certain a person non compos mentis can be guilty of no crime. 1 Haw. 67.

And lord Hale fays, it is not every melancholy or hypochondriacal diffemper, that denominates a man non compos, for there are few who commit this offence, but are under fuch infirmities; but it must be such an alienation of mind, as renders a person to be a madman, or frantick, or destitute of the use of rea on, which will deno-

minate him non compos. 1 H. H. 412.

4. The offender herein doth incur a forfeiture of goods Forfeiture. and chattels, but not of lands; for no man can for-

Homicide.

feit his land, without an attainder by course of law.

Nor shall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot be viewed, the justices in fessions may inquire thereof; for they have power by their commission to inquire of all selonies: and a presentment thereof found before them, intitles the king to the forfeiture. 3 Inst. 54, 55. Dalt. c. 144.

But nevertheless, the forfeiture shall relate to the time of the wound given, and not to the time of the death, or of the inquisition. 3 Inst. 55. Dalt. c. 144. I Hale's Pl. 29. I Haw. 68.

But lord Hale, in his history of the pleas of the crown, feemeth to doubt, whether it shall not relate to the time of the death only, and not to the time of the wound given.

1 H. H. 414. Corruption of 5. Nor dot

blood.

Burial.

5. Nor doth the offence work any corruption of blood,

or loss of dower. 1 Haw. 68.

6. By the rubrick in the common prayer, before the burial office (confirmed by act of parliament, 13 & 14 C. 2. c. 4.) perfons who have laid violent hands upon themselves, shall not have that office used at their interment.

Hops. See Extite.

hozles.

Stealing of horses belongs to title Larceny.

I. Buying of stolen borses.

II. Killing or maining borfes in the night.

III. Putting stoned borfes on commons.

IV. Putting scabbed borses on commons.

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I. Buying of stolen borses.

BY the 2 & 3 P. & M. c. 7. and 31 El. c. 12. it is enacted as follows:

1. The keeper of every fair and market shall yearly ap- Horse fair. point a certain special and open place, where horses shall be fold in any fair or market overt.

2. And shall appoint one or more persons to take toll Toll taker. there, and to keep the fame place from ten in the forenoon

till fun-fet.

3. And the fale or exchange in any fair or market Horse to be overt, of any stolen horse, shall not after the proper shewed one hour, ty, unless the same shall be, in the time of the said fair or market, openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten of the clock and fun fet, in the open place of the fair or market, wherein horses are commonly used to be fold, and not within any house, yard, backside, or other privy or fecret place.

4. Nor unless all the parties to the bargain shall come Seller and buyer together, and bring the horse to the open place appointed to go to the toll taker.

for the toll taker, or for the book keeper where no toll

5. Nor unless such toll taker there, or (where no Sale to he entoll is paid) the book keeper or chief officer of the tred. fair or market, shall take upon him perfect knowledge of the feller, and of his true christian name and furname and place of abode, and shall enter all the same his knowledge in a book to be kept for that purpose, or else that the feller shall bring to the toll taker, or other officer aforesaid, one credible person, that shall testify that he knoweth the feller, and his true name, furname, miftery, and dwelling place, and there enter the fame, and also the name, furname, miftery, and dwelling place of him that fo avoucheth his knowledge.

6. Nor unless he also cause to be entered, the very true And the price.

price.

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7. And also the colour, and one special mark at least. And marks:
8. And also the buyer to pay the toll, if any is due; if Toll to be paid.

not, then to give Td. for the entry.

9. Which done, the person entring the same shall give Certificate of to the buyer requiring and paying 2d. for the fame, a entry. note in writing of all the contents of fuch entry subscribed with his hand.

Penalties.

10. Every person offending in any of the premisses shall forfeit 51. half to the king, and half to him that shall sue before the justices in fessions, or in any ordinary court of record; and the fale shall be void: and the owner may feize and take his horse again, or have an action of detinue or replevin for the same.

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11. And if any horse shall be stolen, and after shall be been duly entred, fold in open fair or market, and the fale shall be used in all points as aforefaid, yet nevertheless such sale in six months after the felony done, shall not take away the owner's property, so as claim be made in fix months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so as proof be made before such magistrate in 40 days next enfuing by two witnesses, that the property of fuch horse was in the party claiming, and was stolen from him within fix months next before fuch claim; but the party from whom the same was stolen, may at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer to the party who hath possession, so much as he shall swear before such magistrate, that he paid for the same.

II. Killing, or maining borses in the night.

Killing.

1. By the 22 & 23 C. 2. c. 7. Where any person shall in the night time maliciously kill or destroy any horses; he shall be guilty of felony, and may be transported, by three justices in sessions, for seven years.

Maiming.

2. And if any person shall in the night time maliciously wound or hurt any horses; he shall forfeit to the party grieved treble damages, on the like conviction.

III. Putting stoned borses on commons.

Size.

1. No person shall put in any forest, chase, moor, heath, common, or wafte (where mares or fillies are used to be kept) any stoned horse above the age of two years, not being 15 hands high, within the shires and territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Effex, Kent, South-Hampshire, North-Wiltsbire, Oxford, Berk-Shire, Worcester, Glocester, Somerset, North-Wales, South-Wales, Bedford, Warwick, Northampton, Yorksbire, Cheshire, Staffordshire, Lancashire, Salop, Leicester, Hereford, and Lincoln; nor under 14 hands in any other county (except Cornwall, Cornwall, 21 J. c. 28. f. 12.), on pain of forfeiting the fame. 32 H. 8. c. 13. f. 2, 10.

But this shall not extend to the marshes in the counties of Cumbridge, Huntington, Suffolk, Northampton, Lincoln, and Norfolk; provided that the horses be of 13 hands.

8 El. c. 8. f. 3.

Also nothing herein shall extend to any stoned horse, that shall happen once in a year to break out of any passure into such common, so that he do not stay there above four days after notice given at the dwelling house of the owner, or after publication thereof on a funday or other session, in the parish church where the owner or possession of such horse dwelleth. 32 H. 8. c. 13.

2. And any person may seize any such horse so being seizing the same, under size, in manner following: He shall go to the keeper of such forest, or (out of such forest) to the constable of the next town; and require him to go with him, to bring such horse to the next pound; and there to be measured by such officer, in the presence of three other honest men to be appointed by the officer; and if he shall be sound contrary to what is above expressed, such person may take him for his own use. 32 H. 8.

And if such keeper, or constable, or other of the three persons shall refuse to do as is aforesaid; he shall forfeit

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3. And all fuch commons and other places shall, with Driving the in 15 days after Michaelmas yearly, be driven by the owners and keepers, or constables, respectively, on pain of 40s. and they may also drive the same at any other time when they shall think meet, 32 H. 8. c. 13.

And if in any of the said drifts, there shall be found any mare, filly, fole, or gelding, that shall then be thought not able, nor like to grow to be able to bear foles of reasonable stature, or to do profitable labours, by the discretion of the drivers, or of the more number of

them; they may kill and bury them. f. 7.

4. All which faid forfeitures shall be half to the king, Penalues, and half to him that shall sue: and the justices in sessions, and stewards of leets, may inquire thereof; and the steward shall certify his presentments to the next sessions.

32 H. 8. c. 13. f. 8.

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IV. Putting

IV. Putting scabbed borses on commons.

Scabbed.

No person shall have, or put to pasture, any horse, gelding, or mare, infected with fcab or mange, in any common, or common fields; on pain of 10 s. which offence shall be inquirable in the leet, as other common annoyances be, and the forfeiture shall be to the lord of the leet. 32 H. 8. c. 13. f. 9.

Houses (duty on). See Calindows. Housebreaking. See Burglary and Larcony.

Boule of correction.

Building or repairing houses of correction.

1. BY the 7 F. c. 4. It was enacted, that before Michaelmas 1611. there should be built or provided within every county, one or more fit and convenient houses of correction, with convenient backfide thereunto adjoining, together with mills, turns, cards, and fuch like necessary implements, to set rogues, vagabonds, or other idle, vagrant, and disorderly persons on work; which houses were to be purchased, conveyed, or assured unto fuch persons, as by the justices in sessions should be directed, upon truft, that the same should be imployed for the keeping, correcting, and fetting to work the faid rogues, vagabonds, or sturdy beggars, and other idle and

disorderly persons. f. 2.

And by the 17 G. 2. c. 5. On presentment of the grand jury, at the affizes, great fession, or general gaol delivery, held for any county or liberty (or at the general fessions, or general quarter sessions of the peace, where there shall be no assizes, great session, or general gaol delivery held, 14 G. 2. c. 33. f. 2.) that there is no house of correction, and that it will be necessary to provide one or more; or that the houses of correction already provided are not fufficient or convenient, or want to be enlarged; the justices in sessions shall have power to build or enlarge one or more fit houses of correction, or to buy or hire houses for that purpose, with convenient backsides or outlets thereto adjoining, or to purchase land, and to erect fuch house or houses upon part thereof, and to lay out the rest of such land for such backsides or outlets:

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and to conclude and agree upon raising such sums of money, as on examination of able and fufficient workmen, or others, shall appear to be necessary for that purpose: And if houses or lands are to be purchased, they shall be conveyed to fuch persons as the said justices in sessions shall direct, in trust and for the uses and purposes afore-

2. And the justices in fessions shall appoint at their will Appointing the and pleasure fit persons to be governors or masters of such master. houses so to be provided. 7 J. c. 4. s. 4. 17 G. 2. c. 5.

J. 32. 3. And for the faid mafter or governor's travel and His falary. care to be had in the faid fervice, and for the relieving of fuch as shall be weak and fick in his custody, the justices in fessions shall appoint such sums yearly as they shall think meet, to be paid quarterly beforehand by the treafurer (the faid mafter or governor giving fufficient fecurity for the continuance and performance of the faid fervice). 7 J. c. 4. f. 6. 17 G. 2. c. 5. f. 33.

Which fums shall be paid out of the general county

rate, by the 12 G. 2. c. 29.

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4. And the justices in sessions shall take care, that the Fitting up the houses of correction (except those erected or maintained house, by particular founders) shall be duly fitted up and supplied with implements, materials, and furniture, for keeping, relieving, imploying, and correcting all idle and disorderly persons, rogues, vagabonds, incorrigible rogues, and others, who shall be fent to, confined or continued in the fame; and shall make such orders and regulations as they shall think fit, for the better governing and regulating the faid houses, and for imploying, relieving, and punishing the persons therein, or for sending them to or from thence; which orders shall not be removed by any 17 G. 2. c. 5. J. 31.

5. And whereas doubts may arise, where authority is Commitment given to any justice or justices, to commit offenders to thinker. the house of correction, for offences cognizable before them out of fessions, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expresly limited; it is enacted, that where any offenders shall be committed as aforesaid, by virtue of any law in being or to be made, and the time and manner of their punishment is not exprefly limited, the faid justice or justices shall commit fuch offenders to the house of correction, there to be kept to hard labour until the next general or quarter fessions,

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or until discharged by due course of law; And two justices (of which the justice who committed him to be one) may discharge the said offender before the sessions, if they see cause; and if he shall not be so discharged, the said sessions may either discharge him, or continue him further not exceeding three months. 17 G. 2. c. 5.

And where any person liable by law to be committed to the house of correction, shall be apprehended within any liberty, city, or town corporate, whose inhabitants are contributory to the house of correction of the county, the justices of such liberty may commit such person to the house of correction for the county. 15 G. 2. c. 24.

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The mafter's duty.

6. The said master or governor shall have power to set such rogues, vagabonds, idle and disorderly persons, as shall be brought or sent to the said house, to work and labour (being able), for such time as they shall continue therein, and to punish them by putting setters or gives upon them, and by moderate whipping: And the said rogues, vagabonds, and idle persons, during such time as they shall continue in the said house of correction, shall in no sort be chargeable to the country for any allowance, either at their bringing in, or going forth, or during their abode there, but shall have such and so much allowance as they shall deserve by their own labour and work. 7 J.

And if the master shall not, at every quarter sessions, yield a true account of all such persons as have been committed to his custody: or if any person committed to his custody, shall be troublesome to the country, by going abroad; or otherwise shall escape away from the house of correction, before he shall be from thence lawfully delivered; then the said justices shall set down such sines and penalties upon the said master or governor, as they shall think sit; and all sines and penalties shall be paid to the treasurer, and accounted for by him. 7 J. c. 4. s. 9.

And two justices within the respective hundreds, divisions, or jurisdictions, where there shall be any house of correction, or any two justices appointed by the sessions, shall visit the same twice a year, or oftner if need be, and report the state thereof to the next sessions. And if the governors thereof shall not set or keep the said idle and disorderly persons, rogues, vagabonds, and incorrigible rogues, to hard labour, and punish and correct them according to the directions of their warrants of commitment, or shall otherwise misbehave themselves.

the faid justices in fessions shall fine them, as by the 7 7. c. 4. the fines to be paid to the treasurer, and accounted for by him as part of the county stock. 17 G. 2.

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7. The justices in sessions may remove the said gover- Removing the nor or mafter; and if any person removed by order of master. fessions, shall refuse or neglect to quit possession, for ten days after notice given him in writing by the clerk of the peace, any two justices (on producing to them such order of fessions, or an attested copy thereof, and on oath of one witness of fuch notice having been given, and of his having refused or neglected to quit possession) may by their warrant direct the sheriff to remove him, who shall thereupon clear the possession as in case of a writ of habere facias possessionem. 17 G. 2. c. 5. s. 31.

8. By the 24 G. 2. c. 40. No spirituous liquors shall spirituous li-

be fold or used in any house of correction; as may be quors not to be seen more at large, under the article relating to spirituous drank therein.

liquors, in the title Cttife.

9. And to defray the expences of erecting, purchafing, Expences of the hiring, enlarging, altering, and repairing houses of cor-whole. rection, and of purchasing land to erect them upon, and for backfides and outlets, and of fitting up and furnishing fuch houses, and of sending persons to and from the same, and imploying them there, the justices in fessions may cause such sums as shall be necessary, to be raised in the fame manner as rates are to be raifed by the 12 G. 2. c. 29. 17 G. 2. c. 5. f. 33.

General form of a commitment to the house of correction.

Westmorland.

J. P. esquire, one of the justices of our lord the king affigned to keep the peace within the faid county, to the constable of in the faid county, and to the keeper of the house of correction -in the faid county.

HESE are to command you the said constable in his said majesty's name forthwith to convey and deliver into the custody of the said keeper of the said house of correction the body of A. O. being charged before me [or, convicted before me, or otherwise as the case shall be: And here set forth the offence.] And you the said keeper are hereby required to receive the faid A. O. into your cuffody in the faid Dd3

house of correction.

bouse of correction, and him there safely to keep, untilor, for the space of—And here set forth the time, and the manner of punishment.] Herein fail you not. Given under my hand and seal the—day of—in the—year of——.

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hue and cry.

Meaning of the words,

I. ORD Coke faith, that hue and cry (called in ancient records hutefium & clamor) do mean the fame thing; for that buer in French is to hoot or shout, in

English to cry. 2 Inst. 173. 3 Inst. 116.

But since it appeareth by the old books (of which also lord Coke maketh observation, 2 Infl. 173.) that hue and cry was anciently both by horn and by voice, it may seem that these two words are not synonymous, but that this butessum or hooting is by the horn, and crying by the voice; with which also accordeth the French word huchet, which signifiest a huntsman's horn: So that hue and cry in this sense will properly signify a pursuit by horn and by voice. Which kind of pursuit of robbers by blowing a horn, and by making an outcry, is said to be practised also in Scotland.

And this blowing of a horn, by way of notice or intelligence, in other cases as well as in the pursuit of felons, seemeth to have been in use of very ancient time: for amongst the laws of Wibtred king of Kent, in the year 696, this is one; that " if a stranger go out of the road, " and neither shout nor blow a horn, he shall be taken

" for a thief."

Hue and cry, what.

2. Hue and cry is the old common law process after felons, and such as have dangerously wounded any person: And this hath received great countenance and authority by several acts of parliament. 2 H. H. 98.

Watches to be

3. To prevent felonies; In walled towns the gates shall be shut from sun setting to sun rising: and none shall lodge without the town, from nine of the clock till day, unless his host will answer for him. In other towns, watches shall be kept: and if a watchman arrest a night walker, and he disobey and sly, the watchman may make hue and cry. 13 Ed. 1. st. 2. c. 4.

Application to the conftable.

4. When any felony is committed, or any person is grievously and dangerously wounded, or any person as-

faulted and offered to be robbed, either in the day or night; the party grieved, or any other, may refort to the constable of the vill; and, I. Give him such reasonable affurance thereof, as the nature of the case will bear. 2. If he knows the name of him that dld it, he must tell the constable the same. 3. If he knows it not, but can describe him, he must describe his person, or his habit, or his horse, or such circumstances as he knows, which may conduce to his discovery. 4. If the thing be done in the night, fo that he knows none of these circumstances, he must mention the number of the persons, or the way they took. 5. If none of all these can be discovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the constable with the fact, and defire him to search in his town for suspected persons, and to make hue and cry after such as may be probably suspected, as being persons vagrant in the same night; for many circumstances may ex post facto be useful for discovering a malefactor, which cannot

be at first found. 2 H. H. 100, 101. 3 Inst. 116.

5. For levying hue and cry, altho' it is a good course Justice's warto have the warrant (A) of a justice of the peace, when rant. time will permit, in order to prevent causeless hue and cry; yet by the frame of the statutes, it is by no means necessary, nor is it always convenient; for the selon may escape before the warrant be obtained, and hue and cry was part of the law, before justices of the peace were first

instituted. 2 H. H. 99.

6. And the duty of the constable is, to raise the power Constable to of the town, as well in the night as in the day, for the raise the town.

profecution of the offender. 3 Inft. 116.

7. And upon hue and cry levied against any person, or And to search, where any hue and cry comes to a constable, whether the person be certain or uncertain, the constable may search suspected places within his vill, for the apprehending of

8. But tho' he may fearch suspected places or houses, Breaking doors yet his entry must be by the doors being open; for heto search, cannot break open doors barely to search, unless the person against whom the hue and cry is levied be there, and then it is true he may; therefore in case of such a search, the breaking open the door is at his peril, namely, justifiable, if he be there; not justifiable, if he be not there: But it must be always remembred, that in case of breaking open a door, there must be first a notice given to them within of his business, and a demand of D d 4 entrance,

Hue and cry.

entrance, and a refusal, before the doors can be broken. 2 H. H. 103. 2 Haw. 86.

Notice to the next conflable.

9. If the person, against whom the hue and cry is raised, be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found, or till they come to the sea side. And this was the law before the conquest. 3 Inft. 116. and impount and

And to the next.

10. And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall afterwards come, ought to fend to every other town round about him, and not to one next town only. And in fuch cases it is needful to give notice in writing (to the purfuers) of the things folen, and of the colour and marks thereof, as also to describe the person of the felon, his apparel, horse, and the like, and which way he is gone, if it may be. Dalt. c. 54.

What shall be done where the described.

11. But if the hue and cry be upon a robbery, burgerion cannot be lary, manflaughter, or other felony committed, but the person that did the fact is neither known nor describable by person, clothes, or the like, yet such a hue and cry is good, as hath been faid, and must be pursued, tho' no person certain be named or described. 2 H. H. 103-

And therefore in this case, all that can be done is, for those that pursue the hue and cry, to take such persons as they have probable cause to suspect; as for instance, such persons as are vagrants, or such suspicious persons as come late into their inn or lodgings, and give no reasonable account where they had been, and the like. id.

All perfons fhall follow the hue

and cry.

12. By the statute of the 3 Ed. 1. c. 9. All shall be ready, and apparelled, at the commandment and summons of sheriffs (or constables, 2 Inft. 171.) and at the cry of the country, to fue and arrest felons; on pain of a grievous fine. And if default be found in the lord of the franchise, the king shall take the franchise to himfelf; and if in the theriff or other officer, they thalf have one year's imprisonment, and shall make a grievous

And by the statute of the 13 Ed. 1. st. 2. c. 1. it is likewise enacted, that immediately upon robberies and felonies committed, fresh suit shall be made, from town to town, and from county to county.

And no hue and cry shall be lawful, except it be by

horsemen and footmen. 27 El. 6. 13. s. 10.

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And the life of hue and cry is fresh fuit: 3 Inst. 117.

and the doors are shut, and refused to be opened on deto arrest upon, mand of the constable, and notification of his business, he may break open the doors; and this he may do in any case, where he may arrest, though it be only a suspicion of selony; for it is for the king and commonwealth, and therefore a virtual non omittas is in the case: and the same law is, upon a dangerous wound given, and a hue and cry levied upon the offender. 2 H. H. 102.

14. And it feems in this case, that if he cannot be Killing in the otherwise taken, he may be killed; and the necessity ex-pursuit.

cufeth the constable. 2 H. H. 102.

15. If hue and cry be raised against a person certain Arresting an infor felony, though possibly he is innocent; yet the con-nocent person. Stables, and those that follow the hue and cry, may arrest and imprison him in the common gaol, or carry him to a justice of the peace, to be examined where he was at the time of the selony committed, and the like. 2 H. H. 102.

16. If the hue and cry be not against a person certain, Arresting a perbut by description of his stature, person, clothes, horse, son by descripand the like; yet the hue and cry doth justify the contion. Stable, or other person following it, in apprehending the person so described, whether innocent or guilty: for that is his warrant; it is a kind of process that the law allows of, not usual in other cases, namely, to arrest a person by description. 2 H. H. 103.

17. In case of hue and cry once raised and levied, on Case of arresting supposal of a selony committed, though in truth there was upon hue and cry no selony committed, yet those that pursue hue and cry, cause.

may arrest and proceed, as if so be a felony had been really committed.

And therefore the justification of an imprisonment by a person upon suspicion, and by a person (especially a constable) upon hue and cry levied, do extremely differ; for in the former case, there must be a felony averred to be done, and it is issuable; but in the latter, to wit, upon hue and cry it need not be averred, but the hue and cry levied upon information of a felony is sufficient, though perchance the information were false.

And the reasons hereof are these; 1. Because the constable cannot examine the truth or falshood of the suggestion of him that first levied it, for he cannot administer to him an oath; and if he should forbear his pursuit of the hue and cry till it be examined by a justice of the peace,

the

the felon might escape, and the pursuit would be lost and fruitless. 2. Because the constable is by the several acts of parliament compellable to pursue hue and cry; and he is punishable, and so are those of the vill, if they do it not. 3. Because he that first raiseth a hue and cry, where no felony is committed, that is, he who giveth the false information, is severely punishable by fine and imprisonment, if the information be false.

And therefore if he raise hue and cry upon a person that is innocent, yet they that pursue the hue and cry may justify the imprisonment of that innocent person; and the raiser is punishable: and by the same reason, if he give notice of a felony committed, where there was in

truth none.

And here the juffification of the imprisonment is mixed, partly upon the hue and cry, and partly upon their own fuspicion; and therefore, 1. In respect that it is upon hue and cry there needs no averment, that the felony was done, if the arrest be by that constable that first received the information, and so raised the hue and cry; or if the arrest were made by that constable, or those vills to whom the hue and cry came at the fecond hand, it must be averred, that fuch a hue and cry came to them, purporting fuch a felony to be done. 2. But also inasmuch as the hue and cry neither names nor describes the person of the felon, but only the felony committed, and therefore the arrest of this or that particular person is lest to the sufpicion and discretion of the constable, or of the people of the fecond or third vill, he that arrefts any person upon fuch general hue and cry, must aver that he sufpected, and shew a reasonable cause of suspicion.

But now by the statute of 7 J. c. 5. the constable, or any that come to his assistance, even in this case of hue and cry, may plead the general issue, and give the whole matter of the justification in evidence; for the pursuit of hue and cry, though performed by others as well as the constable, is principally the act of the constable of the vill, and the others are but as his deputies or assistants, within the precincts of their constablewick. 2 H. H.

101, 2, 3, 4.

Persons taken on 18. It seems that they who are taken upon fresh hue hue and cry, how and cry, are not bailable, as being to be accounted amongst those persons, who are under a violent presumption of guilt. 2 Haw. 98.

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19. By the 13 Ed. 1. ft. 2. c. 6. Constables of hundreds High constables shall be chosen, who shall present before justices assigned, to present those defaults of the fuits of towns, and all fuch as lodge hue and cry. strangers in uplandish towns, for whom they will not answer.

20. And they which levy not hue and cry, or pursue Punishment of not upon hue and cry, may be indicted, fined, and im- those who follow not hue and cry. prisoned. 3 Inft. 117.

21. And it is an article of the leet, to inquire of hues Power of the leet and cries levied and not pursued. 18 Ed. 2.

A. Warrant to levy hue and cry on a robbery having been committed.

Westmorland.

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By

To all constables and other officers, as well in the faid county of Westmorland, as elsewhere, to whom the execution hereof doth or shall belong.

WHEREAS A. I. of ____ in the county of __ yeoman, bath this day made information upon outh. before me J. P. esquire, one of his majesty's justices of the peace in and for the faid county of W. that on this pre-— day of —— in the – fent year of the reign of ---- betwixt the hours of three and four in the afternoon of the same day, at a place called — in the said county of W. in the king's highway there, two malefactors and felons to him the said A. I. unknown, in and upon him the said A. I. then and there being in the peace of god and of our lord the king, feloniously did make an affault, and him the faid A. I. then and there feloniously did put in great fear and danger of his life, and the sum of - of lawful money of Great Britain, of the goods and chattels of him the faid A. I. from the person, and against the will of bim the said A. I. then and there violently and felonioufly did steal, take and carry away; and that one of the faid malefactors and felons, to him the faid A. I. unknown, is a tall, strong man, and seemeth to be about the age of years, is pitted in his face with the small pox, and hath the scar of a wound under his left eye, and had then on a dark brown riding coat, &c. and did ride upon a bay gelding with a star on his forehead; and the other &c. An that after the faid felony and robbery committed, they the faid malefactors and felons to him the Jaid A. I. unknown, did fly, and withdraw themselves to

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places unknown, and are not yet apprehended: These are therefore to command you forthwith to raife the power of the towns within your several precincts, and to make diligent fearch therein, for the persons above described, and to make fresh pursuit and hue and cry after them from town to town, and from county to county, as well by horfemen as by footmen; and to give due notice hereof in writing, describing in such notice the persons and the offence aforesaid, unto every next constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you or any of you shall, as well upon such search and pursuit, as otherwife, apprehend or cause to be apprehended, as justly suspected for having committed the faid robbery and felony, that you do carry forthwith before some one of his said majesty's justices of the peace in and for the county where he or they shall be so apprehended, to be by such justice examined, and dealt withal according to law. And hereof fail you not respectively, upon the peril that shall ensue thereon. Given under my hand and feal, at in the faid county of W. the ____ day of ___ aforefaid, in the year aforefaid.

Bundzed.

Hundred whence I. In ancient times, before the conquest, it was ordained for called.

If or the more sure keeping of the peace, that all free born men should cast themselves into several companies, by ten in each company; and that every of those ten men should be surety and pledge for the forthcoming of his fellows. For which cause, these companies in some places were called tythings, as containing the number of ten men with their families. And even as ten times ten do make an hundred, so because it was then also appointed, that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general assembly was, and yet is called an hundred. Lamb. Const.

Hundred to be amerced for an escape. 2. If any homicide be committed, or dangerous wound given, in the day time, and the offender escape, the town

shall be amerced; and if out of a town, the hundred shall

be amerced. 2 Haw. 74. 3. The hundred shall make good the damages, in the Hundred answerable in divers cases of robbery; cutting banks; cutting hop binds; other cases. burning houses, barns, outhouses hovels, cocks, mows, or stacks of corn, straw, hay, or wood; mines or pits of coal; destroying granaries, or corn intended for exportation: destroying turnpikes; or works of navigable rivers; and the like: as may be feen under their pro-

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4. Writs of execution which shall be sued out against Damages how to the inhabitants of any hundred, on any judgment obtained by virtue of any act of parliament, shall by the sheriff on receipt thereof be produced to two justices (12.) in or near the hundred; who shall cause a taxation to be made and levied by the constables in 30 days, for paying the plaintiff's costs and damages, and also all such necessary expences as any inhabitants shall have been at in defending such action; the same being first proved on oath before the said justices; and the attorney's bill taxed. And the faid fums shall be paid to the sheriff by the constables in ten days after the time is expired for collecting; and by the theriff, to the persons intitled to receive the same, without any deduction or fee; all in the same manner, as is directed by the statute of the 8 G. 2. c. 16. in cases of rob-22 G. 2. c. 46. f. 34.

> Hunting. See Same. Husband. See Wife.

See Lunaticks. Ideots. Imprilonment. See Arrest, Commitment. Incest. See Lewonels. Inclosures pulling down. See Claob.

Indiament.

- I. Indictment, what.
- II. What offences are indictable.

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- III. Within what time an indistment shall be brought.
- IV. How far several offenders or several offences may be joined in one indistment.
- V. Whether the grand jury may examine witnesses against the king.
 - VI. How many witnesses are requisite to an indistment.
- VII. Whether a grand jury may find an indistment specially.
- VIII. Indistment to be in English.
- IX. Form of an indistment.
- X. Charges of an indistment.

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I. Indistment, what.

INDICTMENT cometh of the French word enditer, and fignifieth in law, an accusation found by an inquest of twelve or more upon their oath. And as the appeal is ever the suit of the party, so the indictment is always the suit of the king, and as it were his declaration; and the party who prosecutes it, is a good witness to prove it. And when such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a presentment; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an inquisition. Inst. 126. 2 Haw. 209.

The whate public of the whate law, ture, 210.

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> exten putes made again Haw.

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II. What offences are indictable.

There can be no doubt, but that all capital crimes whatsoever, and also all kinds of inferior crimes of a publick nature, as misprisions, contempts, disturbances of the peace, oppressions, and all other misdemeanors whatsoever of a publick evil example against the common law, may be indicted; but no injuries of a private nature, unless they some way concern the king. 2 Haw,

Also it seems to be a good general ground, that whereever a statute prohibits a matter of a publick grievance to
the liberties and security of a subject; or commands a
matter of publick convenience, as the repairing of the
common streets of a town; an offender against such statute is punishable, not only at the suit of the party
grieved, but also by way of indictment for his contempt
of the statute, unless such method of proceeding do manifestly appear to be excluded by it. Yet if the party offending hath been fined to the king, in the action brought
by the party (as it is said that he may in every action for
doing a thing prohibited by statute); it seems questionable, whether he may afterwards be indicted, because that
would make him liable to a second fine for the same offence. 2 Haw. 210.

But if a statute extend only to private persons, or if it extend to all persons in general, but chiefly concern disputes of a private nature, as those relating to distresses made by lords on their tenants; it is said that offences against such statute will hardly bear an indistment. 2 Haw. 211.

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Also where a statute makes a new offence, and appoints a particular method of proceeding, without mentioning an indictment, it seemeth to be settled at this day, that it will not maintain an indictment. 2 Haw. 211. Str.

But lord Hale distinguishes upon this, and says, that if a statute prohibit any act to be done, and by a substantive clause gives a recovery by action of debt, bill, plaint, or information, but mentions not an indictment; the party may be indicted upon the prohibitory clause, and thereupon fined, but not to recover the penalty; but then it seems the sine ought not to exceed the penalty; but if the act be not prohibitory, but only that if any person shall do such a thing, he shall forfeit so much, to be recovered by action

Indiament.

action of debt, bill, plaint, or information; then he cannot be indicted for it, but the proceeding must be by action, bill, plaint, or information. 2 H. H. 171.

Also, where a statute adds a further penalty, to an offence prohibited by the common law; there can be no doubt, but that the offender may be still indicted, if the profecutor thinks fit, at the common law. And if the indictment for such offence conclude against the form of the statute, and cannot be made good as an indictment upon the statute, it seems to be now settled, that it may be maintained as an indictment at common law. 2 Haw. 211.

A fact amounting to a felony, is not indictable as a trespass. L. Raym. 712.

III. Within what time an indictment shall be brought.

By the 31 El. c. 5. All indictments upon any fratute penal, whereby the forfeiture is limited to the king, shall be fued within two years after the offence committed: if the forfeiture is limited to the king and profecutor, the fuit shall be in one year; and in default thereof, the same shall be fued for the king, within two years after that year ended. But where a flatute limits a shorter time, the fuit shall be brought within such time limited.

But for indictments of felonies, and other misdemeanors where there is no forfeiture to the king, or to the king and profecutor, no time is limited by any statute; but the feveral acts of general pardon have the effect of a like limitation. The last act of which kind was that of the 20 G. 2. c. 52. for certain offences committed before June 15. 1747.

IV. How far several offenders or several offences may be joined in one indistment.

1. If there be one offender, and several offences committed by him, as burglary and larceny, they may be contained in one indictment. 2 H. H. 173.

But in the case of K. and Clendon, T. 4 G. 2. There was an indictment fetting forth, that the defendant made an affault upon Sarah Beatniff and Elizabeth Cooper, and did them beat, wound, and evil intreat. After verdict for the king, it was moved in arrest of judgment, that these were two distinct offences, and therefore could not be laid in the same indictment; and of that opi-

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2. If there be feveral offenders that commit the fame offence, though in law they are several offences in relation to the several offenders, yet they may be joined in one indictment; as if several commit a robbery, or burglary, or murder. 2 H. H. 173.

3. And so it is, though the offences are of feveral degrees, but dependant one upon another, as the principal in the first degree, and the principal in the second degree, to wit, present, aiding and abetting the principal, and

accessary before or after. 2 H. H. 173.

4. Also several persons may be indicted in the same indictment for several offences of the same nature, as for keeping disorderly houses; but the indictment ought to set

forth that they severally did so. 2 H. H. 173.

And this is only to be understood, where the offences may be joint, as in extortion, maintenance, receiving stolen goods, and the like; and not where the offence is a separate act in each, as in the case of K. against Philips and others, M. 5 G. 2. Six were indicted in one indictment for perjury, and four of them pleading, were convicted. It was moved in arrest of judgment, that the crime of perjury is in its nature feveral, and two cannot be indicted together. And by the court, There may be great inconveniencies if this is allowed; one may be defirous to have a certiorari, and the other not; the jury on the trial of all, may apply evidence to all, that is but evidence against one: And they cited a case, T. 6 An. 2. against Hodg fon and others, where two were indicted for being scolds, and compared to barratry, and it was held not to lie. And in the principal case judgment was at-Str. 921.

In like manner, E. 11 G. K. against Weston and others. There was an indictment against fix jointly and severally for exercising a trade; and quashed, because there ought

to be distinct indictments. Str. 623.

5. Larcenies committed of several things, though at several times, and from several persons, may be joined in one indictment. 2 H. H. 173.

V. Whether the grand jury may examine witnesses against the king.

Lord Hale fays, that the grand jury at the affizes of fessions ought only to hear the evidence for the king, and Vol. II. E e in

in case there be probable evidence, they ought to find the bill, because it is but an accusation, and the party is to be put on his trial afterwards. 2 H. H. 157.

Which doctrine is also laid down by chief justice Pemberton, in the case of the earl of Shaftsbury, St. Tr. V. 2.

P. 415.

But the learned editor of Hale's History observes upon this, that Sir John Hawles in his remarks on the said case, St. Tr. V. 4. p. 183. unanswerably shews, that a grand jury ought to have the same persuasion of the truth of the indictment as a petty jury, or a coroner's inquest; for they are sworn to present the truth, and nothing but the truth.

And lord Coke fays, that feeing indictments are the foundation of all, and are commonly found in the absence of the party accused, it is necessary there should be substantial proof. 3 Inst. 25.

VI. How many witnesses are requisite to an indistment.

An indictment may be found upon the oath of one witness only, unless it be for high treason, which requires two witnesses. 2 Haw. 256. And unless, in any instance it be otherwise specially directed by act of parliament.

VII. Whether the grand jury may find an indictment specially.

It feems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part false; but must either find a true bill or ignoramus for the whole; and that if they take upon them to find it specially, or conditionally, or to be true for part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 Haw. 210.

VIII. Indictment to be in English.

All indictments, informations, inquisitions and presentments, shall be in *English*, and be written in a common legible hand, and not court hand; on pain of 50 s. to him that shall sue in three months. 4 G. 2. 6. 26. 6 G. 2. 6. 14.

IX. Form

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IX. Form of an indistment.

In order to understand this matter rightly, it is judged requisite first to insert the intire form of an indictment, and then to take it in pieces, and explain the several parts of it in their order.

The instance which is chosen is on the statute of stab-

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The caption of the indictment is no part of the indictment itself, but is the style or preamble, or return that is made from an inferior court to a superior, from whence a certiorari issues to remove; or when the whole record is made up in form; for whereas the record of the indictment, as it stands upon the file in the court where it is taken, is only thus, The jurors for our lord the king upon their oath present; when this comes to be returned upon a certiorari, it is more full and explicit, as follows: 2 H. H. 166.

Mestmorland. A T the general quarter sessions of the peace holden at Appleby in and for the county aforesaid, the seventh day of April in the first year of the reign of our sovereign lord George the third of Great Britain, France, and Ireland, king, defender of the faith, and so forth, Before J. P. and K. P. esquires, and others their associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to hear and determine divers selonies, trespasses, and other misdemeanors in the said county committed, by the oath of——good and lawful men of the county aforesaid, sworn and charged to inquire for our our said lord the king, and for the body of the county aforesaid, it is presented;

That John Armstrong late of Appleby in the county afore-faid, yeoman, not having god before his eyes, but being moved and seduced by the instigation of the devil, on the thirtieth day of March in the sirst year of the reign of our said sovereign lord George the third of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at the bour of nine in the asternoon of the same day, with force and arms, at Appleby aforesaid in the county as oresaid, in and upon one George Harrison in the peace of god and of our said lord the king then and there being (the aforesaid George Harrison not baving any weapon then drawn, nor the aforesaid George Harrison having first stricken the

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faid John Armstrong) feloniously did make an assault; and that the aforesaid John Armstrong, with a certain drawn fword of the value of five shillings, which he the said John Armstrong in his right hand then and there had and held, the faid George Harrison in and upon the right side of the belly near the short ribs of him the said George Harrison (the aforesaid George Harrison as is aforesaid then and there not baving any weapon drawn, nor the aforesaid George Harrison then and there having first stricken the said John Armstrong) then and there feloniously did stab and thrust, giving unto the faid George Harrison then and there with the sword aforefaid, in form aforesaid, in and upon the right side of the belly near the short ribs of him the said George Harrison, one mortal wound of the breadth of one inch, and of the depth of nine inches; of which said mortal wound, he the said George Harrison then and there instantly died: And so the jurors aforesaid upon their oath aforesaid do say, that the said John Armstrong him the faid George Harrison on the aforefaid thirtieth day of March in the year aforesaid, at Appleby aforesaid in the county aforesaid, in manner and form aforefaid, feloniously did kill; against the peace of our said lord the now king, his crown and dignity, and against the form of the Statute in such case made and provided.

Westmorland The name of the county must be in the margin, or repeated in the body of the caption. 2 H. H. 166.

At the general quarter sessions of the peace The court where the indictment is made, must be expressed; otherwise the caption is erroneous. 1 H. H. 166. 2 Haw. 252.

Holden at Appleby in and for the county aforesaid. It must appear where the sessions was held; and that the place, where it was held, is within the extent of the commission. 2 H. H. 166.

The seventh day of April in the first year of the reign of our sovereign lord George the third] It hath been adjudged, that if the caption of the indictment describe the sessions holden in the time past, and not in the time present; or as holden on such a day in such a year of the king, without ascertaining what king, it is insufficient. But it seems to be agreed, that it is sufficient to express the year of the king, without adding that of our lord, 2 Haw. 255.

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The seventh day Figures to express numbers are not allowable in an indictment; but numbers must be expressed in words. 2 H. H. 170. Cr. Cir. 109. Andr. 137. H. 11 G. 2. K. and Haddock. Or at least in Roman numerals. Str. 261. H. 6 G.- K. and Philips.

Before J. P. and K. P. esquires, and others their associates. It is not necessary to name all the justices, but only so many as are enabled to hold a sessions, and the rest may be supplied by the words and others their associates. 2 H. H. 166.

And altho' no fessions can be held without one of the justices being of the quorum, yet in the caption there need not be any mention which of them, or whether any of them, are of the quorum, for it is sufficient if de facto the sessions be held before him or them that are of the quorum, altho' not so mentioned, and so is the usual course. 2 H. H. 167.

And also to hear and determine, &c.] These words are necessary, because without this clause (by the commission) they cannot proceed by indictment. 2 H. H. 166. Str. 442.

By the oath] If the caption concludes that it is presented without saying on their oath, it shall be quashed; for their presentment must be upon oath, and so returned. 2 H. H. 168.

By the eath of———] It must name the jurors that presented the offence; and therefore by the oath of A. B. C. D. and others, is not good; for it may be the presentment was by a less number than 12, or that some one of them was incapacitated who might influence all the rest, as for instance a person outlawed; in which case the indictment may be quashed by plea. 2 H. H. 167.

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Good and lawful men of the county aforesaid. These words also, lord Hale saith, are necessary. 2 H. H. 167. But Mr. Hawkins says, they have been often over-ruled; because all men shall be intended to be honest and lawful, till the contrary appear. 2 Haw. 215.

Sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid. These words also seem requisite to be inserted. 2 H. H. 167. But yet do not seem to be absolutely necessary. L. Raym. 710.

Indiament.

It is presented; that John Armstrong, late of Appleby in the county aforesaid, yeoman] The name of the party indicted regularly ought to be inserted, and inserted truly in every indictment. 2 H. H. 175.

But the inhabitants of a parish, may be indicted for not repairing the highway, although no person is particu-

Jarly named. Wood b. 4. c. 5.

It is faid that no person indicted can take any advantage of a mistaken surname in the indictment, notwithstanding such surname hath no manner of affinity with its true one, and he was never known by it. 2 Haw. 230, 1, 2, 3. 2 H. H. 176.

But the mistake of the christian name is pleadable, and the party shall be dismissed from that indicament. 2 H.

H. 176.

But the safest way is to allow his plea of missioner, both as to his surname and as to his christian name, for he that pleads missioner of either, must in the same plea set forth what his true name is, and then he concludes himself, and if the grand jury be not discharged, the indictment may presently be amended by the grand jury, and returned according to the name he gives himself. 2 H. H. 176.

Also an indictment naming the defendant by two chri-

stian names is not good. L. Raym. 562.

If the county is in the margin, and the indictment sets forth the fact to be done at such a place in the county aforesaid, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at such a place in the county aforesaid, vitiates the indictment, because two counties are named before, and therefore it is uncertain to which it refers. Crown Cir. 115, 116.

By the 1 H. 5. c. 5. In all indictments on which process of outlawry lieth, to the names of the defendants additions shall be made of their estate, or degree, or mistery, and of the towns, or hamlets, or places, and counties

where they were or be converfant,

But altho' the defendant be indicted by a wrong name or addition, or with no addition, yet if he appear, and plead not guilty, without taking advantage of that defect, he shall never alledge the missoner or want of addition to stop his trial or judgment; for by such his appearance, and pleading to issue, the indictment is affirmed,

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and the misnomer or want of addition salved. 2 H. H.

176.

And if several persons be indicted for one offence, misnomer or want of addition of one, quasheth the indictment only against him, and the rest shall be put to answer; for they are in law as several indictments. 2 H. 177.

And it is the common practice, where an indicament is infufficient, while the grand jury is before the court, to amend it by their consent, in a matter of form, as the name or addition of the party, or the like. 2

Haw. 245.

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Not having god before his eyes, but being moved and feduced by the instigation of the devil] I do not find it afferted by any authority, that these words are necessary in an indictment.

On the thirtieth day of March in the first year of the reign, &c.] No indictment can be good, without precisely shewing a certain day of the material facts alledged in it. 2 Haw. 235.

And if the offence be done in the night, before midnight, the indictment shall suppose it to be done in the day before; and if it happen after midnight, then it must

fay, it was done that day after. Lamb. 492.

And altho' the day be inserted, yet if the year is not likewise inserted, the indicament is insufficient. 2 H. H.

But where an indictment charges a man with a bare omission, as the not scouring such a ditch, it is faid, that

it needs not shew any time. 2 Haw. 236.

It is most regular to set forth the year, by shewing the year of the king; yet this may be dispensed with for special reasons, if the very year be otherwise sufficiently expressed. 2 Haw. 236.

And if it fay, on such a day last past, without shewing in what year, that is good enough; for the certainty may be found out by the style of the sessions.

Lamb. 491.

But tho' the day or year be mistaken in the indictment, yet if the offence were committed in the same county, tho' at another time, the offender ought to be found guilty: but then it may be requisite, if any escheat or forfeiture of land be conceived in the case, for the petit jury to find the true time of the offence committed; and therefore it is best in the indictment to set

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Indiament.

down the time as truly as can be, tho' it be not of abfolute necessity to the defendant's conviction. 2 H. H. 179.

And this the rather, because the jury are to find the

indictment upon their oaths. Dalt. c. 184.

Upon which ground, namely, because the jury are sworn to present the truth, it is best to lay all the facts in the indictment as near to the truth as may be; and not to say, in an indictment for a small assault (for instance), wherein the person assaulted received little or no bedily hurt, that such a one with swords, staves, and pistols, beat, bruised, and wounded him, so that his life was greatly despaired of; nor to say in an indictment for an highway being obstructed, that the king's subjects cannot go thereon, without manifest danger of their lives; and the like. Which kind of words, as they are not at all necessary, so they may stagger an honest man upon his oath, to find the fact as so haid.

At the bour of nine in the afternoon of the same day It is not necessary to mention the bour, in an indictment, 2 Haw. 235.

With force and arms] By the 37 H. 8. c. 8. it is enacted, that whereas it had been commonly used in indictments, to put in the same the words vi & armis, and in divers of the same indictments to declare the manner of the force and arms, viz. baculis, cultellis, arcubus, & sagittis, or such like, where in truth the parties had no manner of such weapons at the time of the offence committed; therefore for the suture, these words, or such like, shall not of necessity be put in any inquisition or indictment.

But yet where fuch words are proper and pertinent, it is fafe and advisable to insert them, if it be to no other purpose than to aggravate the offence. 2 Haw.

242.

At Appleby aforesaid, in the county aforesaid] No indictment can be good, without expressly shewing some place wherein the offence was committed, which must appear to have been within the jurisdiction of the court. 2 Haw. 236.

But a mistake of the place will not be material upon the evidence, on not guilty pleaded, if the sact be proved at some other place in the same county. 2 Haw. 237. the interest ted in marg fuffic be un indicated.

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flatut ex offic 245 And it is not fufficient that the county be expressed in the margent, but the vill where the offence was committed must be alledged to be in the county named in the margent, or, in the county aforesaid, which seems to be sufficient where but one county is named before, but to be uncertain where a county is named in the body of the indictment different from that in the margent. 2 Haw. 220. 2 H. H. 180.

In and upon one George Harrison] Wherever the person injured is known to the jurors, his name ought to be put in the indicament, 2 Haw. 232.

But if they know not his name, an indicament for the murder of a person unknown, or for stealing the goods

of a person unknown, is good. 2 H. H. 181.

Also there is no need of an addition of the person upon whom the offence is committed, unless there be a plurality of persons of the same name; neither then is it effential to the indictment, tho' sometimes it may be convenient for distinction sake to add it. 2 H. H. 182.

In the peace of god, and of our faid lord the king, then and there being It is usual to alledge this, but not necessary, and possibly not true, for he might be breaking the peace at the time. 2 H. H. 186.

The aforesaid George Harrison not having any weapon then drawn, nor the aforesaid George Harrison having first stricken the said John Armstrong] An indictment grounded upon an offence made by act of parliament, must by express words bring the offence within the substantial description made in the act of parliament; and those circumstances mentioned in the statute to make up the offence, shall not be supplied by the general conclusion against the form of the statute. 2 H. H. 170.

And so it is, if an act of parliament oust clergy in certain cases, as murder of malice forethought, robbery in or near the highway, though the offences themselves were at common law, yet because at common law within clergy, they shall not be ousted of clergy, though convicted, unless these circumstances, as of malice forethought, or near the highway, be expressed in the indictment. 2 H. H.

170.

But there is no necessity in an indicament on a publick statute, to recite such statute; for the judges are bound a officio to take notice of all publick statutes. 2 Haw. 245:

Indiament.

Met if the profecutor take upon him to recite it, and materially vary from a substantial part of the purview of the statute, and conclude against the form of the statute aforesaid, he vitiates the indictment. 2 Haw. 246.

Also it seems to be generally agreed, that a misrecital of the place or day at which the parliament was holden, vitiates an indictment. 2 Haw. 246.

And it hath been adjudged, that a mifrecital of the title

of a statute is fatal. 2 Haw. 247.

But there is no need to alledge in an indictment, that the defendant is not within the benefit of the provisoes of the statute; although the same may be necessary in a conviction: for since no plea can be admitted to a conviction, and the defendant can have no remedy against it, but from an exception to some defect appearing in the face of it, and all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty. 2 Haw. 250. 2 H. H. 170, I.

Feloniously did make an assault There are several words of art which the law hath appropriated for the description of the offence, which no circumsocution will supply; as feloniously, in the indictment of any selony; burglariously, in an indictment of burglary; and the like. 2 H. H. 184.

And if a man be indicted that he flole, and it is not faid feloniously, this indictment imports but a trespass. 2 H. H. 172.

With a certain drawn fword] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poisoning, or strangling, it doth not maintain the indictment upon evidence. 2 H. H. 185.

Of the value of five Shillings] Regularly it ought to fet forth the price of the fword or weapon, or else fay of no value; for the weapon is a deodand forfeited to the king, and the township shall be charged for the value, if dilivered to them; but this seems not to be essential to the indictment. 2 H. H. 185.

Which he the faid John Armstrong in his right hand then and there had and held It must shew in what hand he held his sword. 2 H. H. 185.

In and upon the right side of the belly near the shorts ribs of him the said George Harrison] There must be a certainty of the offence committed, and nothing material shall be taken

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ll be aken taken by intendment or implication; but the special manner of the whole fact ought to be set forth with certainty. 2 Haw. 225, 227.

And therefore in the case of murder, it ought to shew in what part of the body the person was wounded: and therefore if it be on his arm, or hand or side, without saying whether right or lest, it is not good. 2 H. H.

If theft be alledged in any thing, the indictment must fet forth the value of the thing stolen; that it may appear, whether it be grand or petty larceny. 2 H. H. 182.

In like manner, an indictment that the defendant took and carried away such a person's goods and chattels, without shewing what in certain, as one horse, one cow, is not good. 2 H. H. 182.

An indictment that the defendant is a common high-wayman, a common defamer, a common disturber of the peace, and the like, is not good; because it is too general, and contains not the particular matter wherein the offence was committed. 2 H. H. 182.

In like manner an indictment for divers fcandalous, threatning and contemptuous words, spoken of a justice of the peace, is not good, but ought to set forth the words in special. Str. 699.

An indicament for disobeying an order of justices, must find positively, that such an order was made, and not by way of recital, that whereas — L. Raym.

But in an indictment on a conviction, it is not necessary to set forth the conviction at large, but only shortly, that such a one was before such and such justices convicted, according to the form of the statute, and thereupon a warrant was issued, &c. L. Raym. 1196.

Then and there feloniously did stab and thrust In an indictment it is best, and often necessary, to repeat the time and place, to the several parts of the fact. 2 H. H. 178.

Thus in an indictment of murder or manslaughter, as well the day and place of the stroke, or other act done, as of the death, must be expressed; the former, because the escheat or forseiture of lands relates thereto; the latter, because it must appear, that the death was within the year and day after the stroke. 2 H. 179.

Indiament.

One mortal wound of the breadth of one inch, and of the depth of nine inches] Regularly the length and depth of the wound is to be shewed; but this is not necessary in all cases, as namely, where a limb is cut off; so it may be

also a dry blow. 2 H. H. 186.

But though the manner and place of the hurt and its nature be requifite, as to the formality of the indictment, and it is fit to be done as near the truth as may be; yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is sufficient to maintain the indictment.

Against the peace of our said lord the king] An indictment without concluding against the peace, is insufficient, tho' it be but for using a trade not having been an apprentice; for every offence against a statute is against the peace, and ought so to be laid. 2 H. H. 188.

Also an indictment that concludes against the peace, and faith not of our lord the king, is infufficient. 2 H. H.

His crown and dignity An indicament need not conclude against his crown and dignity, though it be usual in many indictments. 2 H. H. 188.

And against the form of the statute in such case made and provided] Regularly, if a statute only make an offence, or alter an offence from one crime to another, as making a bare misdemeanor to become a felony, the indictment for fuch new made offence, or new made felony, must conclude against the form of the statute, or otherwise it is insufficient. 2 H. H. 192.

But if a man be indicted for an offence, which was at common law, and concludes against the form of the statute, but in truth it is not brought by the indicament within the statute, it shall be quashed, and the party shall not be put to answer it as an offence at common law.

2 H, H. 171.

And if an offence were felony at common law, but a special act of parliament outs the offender of some benefit that the common law allowed him, when certain circumstances are in the fact; though the body of fuch indictment must express those circumstances, according as they are prescribed in the statute, yet the indictment need not conclude against the form of the statute: Thus on the statute of the 8 El, c. 4. in case of pick-pockets, the

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body of the indictment must bring them within the express purview of the statute, or otherwise they shall have the benefit of clergy; but it need not conclude against the form of the statute, neither is it usual in such cases, for it was selony before, and the statute doth not give a new punishment, nor make it to be a crime of another nature, but only takes away clergy. But yet, if it should conclude in such case against the form of the statute, it would not vitiate the indictment, but would be only surplusage. 2 H. H. 190.

If an act of parliament, making an offence, be but temporary, and made perpetual by another statute, the indictment concluding against the form of the *statute*, is

good. 2 H. H. 173.

If the former statute be discontinued, and revived by another statute, the best way is to conclude against the form of the statutes; though there is good opinion, that it is good enough to conclude against the form of the first statute. 2 H. H. 173.

If one statute be relative to another, as where the former makes the offence, the latter adds a penalty; the indictment ought to conclude against the form of the statute. 2 H. H. 173.

X. Charges of an indictment.

By the 10 & 11 W. c. 23. No clerk of affize, clerk of the peace, or other person, shall take any see of any person bound over to give evidence against a traytor or selon, for the discharge of his recognizance; nor shall take more than 2s. for drawing any bill of indictment against any such selon: on pain of 5l. to the party grieved, with sull costs. And if he draw a bill desective, he shall draw a new one gratis, on the like pain.

For the drawing of indictments for other misdemeanors, not being treason or felony, no fee is limited by any statute: and therefore the same dependent upon the custom and ancient usage.

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Condition of a recognizance to prefer a bill of indictment.

Condition of a recognizance to answer to an indictment.

THE condition of this recognizance is such, That if the abovebound A. O. shall personally appear at the next general quarter sessions of the peace to be holden at — in and for the said county, then and there to answer to an indictment to be preferred against him by A. I. of — yeoman, for assaulting and beating him the said A. I. and not depart without leave of the court, Then this recognizance to be woid.

comby to they no made had the fining and the way to the the state of the first the state of the

Infants.

Infant, who. 1. BY an infant, or minor, is meant any one who is under the age of 21 years. 1 Inft. 2.

Committing a

2. It is faid generally, that those who are under a nacrime under 14. tural disability of distinguishing between good and evil, as infants under the age of 14 years, which is called the age of discretion, are not punishable by any criminal prosecution whatsoever. But this must be understood with some allowance; for if it appear by the circumstances, that an infant.

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infant under the age of discretion, could distinguish between good and evil, as if one of the age of nine or ten years, kill another and hide the body, or make excuses, or hide himself, he may be convicted and condemned, and forseit as much as if he were of sull age: but in such ease the judges will in prudence respite the execution, in order to get a pardon; and it is said, that if an infant apparently wanting discretion, be indicted and sound guilty of selony, the justices themselves may dismiss him without a pardon. And in general it must be lest to the discretion of the judge, upon the circumstances of the case, how far an infant, under that age, is capax doli, or hath knowledge to discern betwixt good and evil. Hale's Pl. 43, 1 Haw. 2. I H. H. 18.

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A remarkable instance of this kind we have in the case of William York. At Bury summer assizes 1748, William York, a boy of ten years of age, was convicted before lord chief justice Willes, for the murder of a girl of about five years of age; and received fentence of death. But the chief justice, out of regard to the tender years of the prisoner, respited execution, till he should have an opportunity of taking the opinion of the rest of the judges. whether it was proper to execute him or not, upon the special circumstances of the case; which he reported to the judges as follows. The boy and girl were parish children, put under the care of a parishioner, at whose house they were lodged and maintained. On the day the murder happened, the man of the house and his wife went out to their work early in the morning, and left the children in bed together. When they returned from work the girl was miffing; and the boy being asked what was become of her, answered, that he had helped her up, and put on her cloaths, and that she was gone he knew not whither. Upon this, strict search was made in the ditches and pools of water near the house, from an apprehension that the child might have fallen into the During this fearch, the man under whose care the children were, observed that a heap of dung near the house had been newly turned up. And upon removing the upper part of the heap he found the body of the child, about a foot's depth under the furface, cut and mangled in a most barbarous and horrid manner. Upon this difcovery, the boy, who was the only person capable of committing the fact, that was left at home with the child, was charged with the fact which he stiffly denied. When the coroner's jury met, the boy was again charged, but pernifted perfifted still to deny the fact. At length being closely interrogated, he fell to crying, and faid he would tell the whole truth. He then faid, that the child had been ufed to foul herfelf in bed; that the did fo that morning (which was not true, for the bed was fearched and found to be clean); that thereupon he took her out of the bed and carried her to the dung heap; and with a large knife, which he found about the house, cut her in the manner the body appeared to be mangled, and buried her in the dung heap; placing the dung and straw that was bloody under the body, and covering it up with what was clean; and having so done, he got water and washed himself as clean as he could. The boy was the next morning carried before a neighbouring justice, before whom he repeated his confession, with all the circumstances he had related to the coroner and his jury. The justice very prudently deferred proceeding to a commitment, till the boy should have an opportunity of recollecting himself. Accordingly he warned him of the danger he was in, if he should be thought guilty of the fact he stood charged with, and admonished him not to wrong himself; and then ordered him into a room, where none of the crowd that attended should have access to him. When the boy had been some hours in this room, where victuals and drink were provided for him, he was brought a fecond time before the justice, and then he repeated his former confession: Upon which he was committed to gaol. On the trial evidence was given of the declarations before mentioned to have been made before the coroner and his jury, and before the justice; and of many declarations to the same purpose, which the boy made to other people after he came to gaol, and even down to the day of his trial. For he constantly told the same story in subfrance, commonly adding that the devil put him upon committing the fact. Upon this evidence, with some other circumstances tending to corroborate the confession, he was convicted. Upon this report of the chief justice, the judges having taken time to confider of it, unanimoutly agreed, 1. That the declarations stated in the report were evidence proper to be left to the jury. 2. That supposing the boy to have been guilty of this fact, there are fo many circumftances stated in the report which are undoubtly tokens of what lord chief justice Hale somewhere calleth a mischievous discretion, that he is certainly a proper object for capital punishment, and ought to suffer. For it would be of very dangerous consequence to have

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it thought, that children may commit fuch atrocious crimes with impunity. There are many crimes of the most heinous nature, fuch as in the present case the murder of young children, poisoning parents or mafters. burning houses, and the like, which children are very capable of committing, and which they may in some circumstances be under strong temptations to commit; and therefore, tho' the taking away the life of a boy of ten years old may favour of cruelty, yet as the example of this boy's punishment may be a means of deterring other children from the like offences, and as the sparing this boy merely on account of his age will probably have a quite contrary tendency,———in justice to the publick, the law ought to take its course, unless there remaineth any doubt touching his guilt. In this general principle all the judges concurred. But two or three of them, out of great tenderness and caution, advised the chief justice to fend another reprieve for the prisoner; suggesting, that it might possibly appear on further inquiry, that the boy had taken this matter upon himself, at the instigation of some person or other, who hoped by this artifice to screen the real offender from justice. Accordingly, the chief justice did grant one or two more reprieves; and defired the juffice who took the boy's examination, and also some other persons in whose prudence he could confide, to make the strictest inquiry they could into the affair, and make report to him. At length he receiving no further light, determined to fend no more reprieves, and to leave the prisoner to the justice of the law at the expiration of the last. But before the expiration of that reprieve, execution was respited till further order, by warrant from one of the fecretaries of state. And at the summer asfizes 1757, he had the benefit of his majesty's pardon. upon condition of his entring immediately into the fea fervice. Fost. 70.

3. But within feven years of age, there can be no guilt Under seven. whatsoever of any capital offence: the infant may be chastized by his parents or tutors, but cannot be capitally punished, because he cannot be guilty; and if he be indicted for such an offence as is in its nature capital, he must be

acquitted. 1 H. H. 19, 20.

4. An infant under 14, is presumed by law, unable to Committing a commit a rape, and therefore it seems cannot be guilty of rape, it; and though in other selonies mahitia supplet attatem in some cases, yet it seems as to this sact the law presumes

Infants.

him impotent, as well as wanting discretion. I H. H.

Forcible entry.

5. An infant may be guilty of forcible entry, in respect of personal actual violence. I Haw. 147. And the justices may fine him therefore: but yet it shall be good discretion in the justices of the peace, to forbear the imprisonment of fuch infant. Dalt. c. 126.

Because it is said, that he shall not be subject to corporal punishment, by force of the general words of any statute, wherein he is not expresly named. I Haw. 147.

Shall'be liable to país.

6. But if one, who wants discretion, commit a trespass, damages for tref- against the person or possession of another, he shall nevertheless be compelled in a civil action to give satisfaction for the damage. 1 Haw. 2. 1 H. H. 15, 16.

May bring an appeal.

7. An infant may bring an appeal, although it take from the defendant the benefit of waging battle; but he must prosecute such appeal by a guardian. 2 Haw.

An appeal likewise may be brought against him. Haw. 168.

Cannot be an approver.

8. An infant under the age of discretion cannot be an approver; because he cannot take the oath requisite in that cafe. 2 Haw. 205.

How far he may be a witness.

9. In case of rape, committed upon a child of 12 years old, such child may be sworn as evidence; yea if the be under that age, if it appear to the court that the knows and confiders the obligation of an oath, the may be sworn. And in case of evidence against witches, an infant of nine years old was fworn. I H. H. 634. Dalt. 378.

Whether he may be a jurer.

10. An Infant before 21 years of age shall not be sworn in an inquest. 7 W. c. 32. J. 4. 1 Inst. 172.

Woman's age of dower, marriage, and chufing guardian.

11. A woman at 9 years of age may have dower; at 12 may consent to marriage; and at 14 is of age of discretion, and may chuse a guardian. 1 Inst. 78.

Man's age of alfegiance, marriage, and chuang guardian.

12. A man is of age at 12 years to take the oath of allegiance in the torn or leet; and at 14 is of age of difcretion, may confent to marriage and chuse his guardian. I Inft. 78.

Cannot make a

13. At 21, and not before, persons may bind themfelves by any deed, and alien lands, goods and chattels. I Inft. 171.

Nor enter into recognizance.

14. Upon which ground infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their fureties only.

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15. But an infant may bind himself to pay for his ne- May contract for ceffary meat, drink, apparel, phyfick, and fuch like; and necessaries. also for his good teaching or instruction, whereby he may profit himself afterwards: but if he binds himself in an obligation or other writing, with a penalty for the payment of any of these, that obligation shall not bind him. I Inft. 172.

And in Earl's case, I Salk. 387, it is said, that an infant may buy necessaries, but cannot borrow money to buy; for he may misapply the money, and therefore the law will not trust him, but at the peril of the lender, who

must lay it out for him, or see it laid out.

16. Also other things of necessity shall bind him, as a May present to a presentation to a benefice; for otherwise the lapse shall benefice.

incur against him. 1 Inst. 172.

17. And infants seised of estates in trust, or by May convey in a way of mortgage, may make conveyances thereof, as court of equity. the courts of chancery or exchequer shall direct.

c. 19. 4 G. 3. c. 16.

18. And they may furrender leases in the courts of May surrender chancery or exchequer, in order to renew the fame. 29 in a court of equity.

G. 2. c. 31.

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19. Also an infant hath, without consent of any May purchase other, capacity to purchase, for it is intended for his benefit; and at his full age, he may either agree thereunto, and perfect it, or without any cause to be alledged, waive, or disagree to the purchase: and so may his heirs after him, if he agree not thereunto after his full age. I Inft. 2.

20. The common law feems not to have determined May make a precifely, at what age one may make a teltament of a will. personal estate: it is generally allowed, that it may be made at the age of 18, and some say under, for the common law will not prohibit the spiritual court in such cases.

1 Inft. 89. 1 H. H. 17.

21. A person is of age to be an executor at 17; and May be an exean administration of any one during the minority of an cutor. infant, ceaseth when the infant comes to that age. 5 Co.

Pigot's case. 1 H. H. 17.

22. Any person having child or children, under 21 May bequeath years of age, and not married, may by deed or will at-the tuition of his teffed by two witnesses, districts of the collection of the tested by two witnesses, dispose of the custody and tuition of such child or children, until they shall be of the age of 21, or for a leffer time; and this, whether such parent be within or above the age of 21. 12 C. 2. c. 24.

Infants.

May fue by prochein amy.

23. An infant cannot answer but by guardian; but he may fue either by his next friend or by guardian. 3 Salk. 196.

In what case he may release a debt.

24. If an infant of the age of 17 years release a debt, this is void; but if an infant make the debtor his executor, this is a good release in law of the action. I Inft. 264.

At what age he may be bound apprentice.

25. By the 5 El. c. 4. Perfons above the age of 10 years by their own confent and agreement, may be bound apprentices.

And by the 5 El. c. 5. Any person, above seven years

old, may be bound apprentice to the fea fervice,

By the 43 El. c. 2. No age is limited for the binding of parish apprentices; fo that it feemeth they may be bound at the age of feven, when they ceafe to be nurse children, and consequently may be taken from the mother.

Infant apprengoods.

26. It shall be felony without benefit of clergy, to tice embezilling fteal goods to the value of 40s. out of an house, though the house be not broken open; but this shall not extend to apprentices under 15 years of age. 12 An. A. I. c. 7.

Infant fervant embezilling goods.

27. Servants above the age of 18, imbezilling their maiter's goods to the value of 40s. shall be punished as felons. 21 H. 8. c. 7.

Information.

king.

At the fuit of the party.

Private action upon a statute,

Action popular.

Information at 1. I Nformations are of two kinds; 1. Such as are the fuit of the king: And, 2. Such as bing are partly the fuit of the king, and partly the fuit of the party; which are commonly called informations qui tam, from those words in the information when the proceedings were in latin, qui tam pro domino rege quam pro seipso, &c. 2 Haw. 259.

2. Of near affinity to an information qui tam, is an action upon a flatute: which is either a private action, which is, when an action is given upon a statute to the king, and to the party grieved only; or, a popular action, which is, where the action is given to the king, or to any one that will fue for the king and himfelf. Wood b. 4. c. 4.

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3. But if the king commenceth his fuit before the in what case the informer, the king shall have the whole forfeiture (be-king may have cause in such case he also is the informer); and he may, halty. before the informer begins his suit, release the penalty to the offender, and bar all others; but if after a popular action is brought by the informer, the king's attorney will enter ulterius non vult prosequi, the informer may prosecute for his part. Wood b. 4. c. 4.

4. Where a matter concerns the publick govern-In what cases an ment, and no particular person is intitled to an action, lie, there an information will lie. 18 El. c. 5. s. 1. 1 Salk.

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5. An information lies, at the common law, for a great variety of crimes less than capital, as batteries, cheats, perjuries, riots, extortions, nusances, contempts, and such like; and also it lies in very many cases by statute, wherein the offender is liable to a fine or other penalty.

Finch 340. 2 Haw. 260.

6. And in general, it feems that of common right an information at the fuit of the king, or an action in the nature thereof, may be brought for offences against statutes, whether they be mentioned by such statutes or not, unless other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 Haw. 260.

7. But an information or action qui tam will not lie on any statute, which prohibits a thing as being an immediate offence against the the publick good in general, under a certain penalty, unless the whole or part of such penalty be expressly given to him who will sue for it; because otherwise it goes to the king, and nothing can be demanded by the party: But where such statute gives any part of such penalty to him who will sue for it by action or information, any one may bring such action or information, and lay his demand, as well for our lord the king, as for bimself. 2 Haw. 256.

8. Also where a statute prohibits or commands a thing, the doing or omission whereof is an immediate danger to the party, and also highly concerns the peace, safety, or good government of the publick, or the honour of the king, or of his supreme courts of justice, it seems to be the general opinion, that the party grieved may bring his action qui tam on such statute. 2

Haw. 265.

Information.

In what time it

9. By the 31 El. c. 5. All actions, suits, bills, indictshall be brought. ments, or informations on any penal statute, whereby the forfeiture is limited to the king, shall be brought within two years after the offence committed; if limited to the king, and to any other who shall prosecute, then within one year; and in default of such prosecution, then to be brought for the king, in two years after that year ended. Provided, that if they are limited by flatute to be brought within shorter time, then they shall be brought within such time limited. f. 5. 6.

On any penal statute But if an offence prohibited by a penal statute, be also an offence at common law; the profecution of it, as of an offence at common law, is no way

restrained hereby. 2 Haw. 272.

To any other who shall prosecute] That is, to a common. informer; and therefore the party grieved is not within the restraint of this statute, but may sue in the same manner as before. 2 Haw. 272.

Two informations on the fame day .

In what county it shall be laid.

10. If two informations be exhibited on the fame day, for the same offence, they mutually abate one another. 2 Haw. 275.

11. By the 21 J. c. 4. All offences against any penal Statute, for which any common informer may ground a popular action, bill, plaint, fuit, or information, before the judges of affize, or justices of the peace in their general or quarter sessions (having power to hear and determine the same), shall be prosecuted in the county where they were committed, and not elsewhere: and if the offence is not proved to have been committed in the same county, the defendant shall be found not guilty. f. 1, 2.

Provided, that informations, suits, or actions, against popish recusants, or persons charged with maintenance, champerty, or buying of titles, may be laid in any county.

Against any penal statute H. 8 W. K. and Gaul. Ch. J. said, ten judges had agreed that this statute doth not extend to any offence created fince; so that profecutions on subsequent penal statutes are not restrained thereby; but this statute is as to them, as it were repealed pro tanto. I Salk. 372.

For which any common informer may ground a popular action. Therefore this extends not to any fuit by a party grieved, or by the attorney general; but only to those brought by common informers. 2 Haw. 269, 270.

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form that General or quarter fessions, having power to hear and determine the same Yet this gives no jurisdiction to justices of the peace, which they had not before; but only appoints, that where informations might have been brought in the courts at Westminster or before justices of the peace, such informations shall be now brought before justices of the peace only. Cro. Car. 112.

In the county where they were committed H. 7 G. Smith and Potter. In the king's bench. In a qui tam on the 5 Eliz. for exercising a trade, without an apprenticeship, it was moved to stay the proceedings, because the nominal plaintiff had released, and and the fact was laid at Cambridge, whereas the jurisdiction of the king's bench is at last settled to be restrained by the 21 J. c. 4. to actions arising in the county where the king's bench sits, so that if they were to go on to trial, the plaintiff could have no effect of his suit. And of this opinion was the court, and they made a rule that proceedings should be stayed. Str. 415.

And not elsewhere] But where a subsequent statute gives a remedy for the recovery of a penalty in any court of record generally, it so far impliedly repeals this restraint, and consequently leaves the informer at his liberty to sue in the courts at Westminster. 2 Haw. 270.

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Also, where a statute limits suits by an informer qui tam, to other courts than those of Westminster ball; yet any one may, by construction of law, exhibit an information in the exchequer, for the whole penalty, for the use of the king. 2 Haw. 268.

12. If jurisdiction be given to the sessions has not and determine, and it is not said by information; this power without shall be by indictment, and not information. Cro. Car. express words.

13. By the 18 El. c. 5. Upon every information which Time of exhibitshall be exhibited by a (common) informer, except for main-ing the informatenance, champerty, buying of titles, or embracery; a note tion to be enshall be made of the day, month, and year of the exhibiting thereof; and it shall be taken to be of record from
that time forward and not before: and no process shall be
issued on such information, till it be exhibited in form aforesaid. f. 1.

14. And by the 21 J. c. 4. No officer shall enter any Oath to be made information, bill or plaint, count or declaration, till the in- on exhibiting the former hath made oath before some of the judges of the court, that the offence was not committed in any other county, and that

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Information:

he believeth in his conscience, that the offence was committed within a year before the information or suit; the oath to be there entered of record. S. 3.

Recognizance to be given.

15. And, in the court of king's bench, the clerk of the crown shall not (except by order of court) exhibit or receive any information in the name of the master of the crown office, for trespasses, batteries, or other misdemeanors, or issue any process thereupon, before be shall have taken, or shall have delivered to him a recognizance from the prosecutor, with his place of abode, title, or profession to be entred, to the perfon against whom the information is exhibited, in the penalty of 201. that he will effectually prosecute such information, and abide by and observe such orders as the faid court shall direct; which recognizance the said clerk of the crown, and also every justice of the peace where the cause of such information shall arise, are impowered to take; after the taking or receipt whereof, he shall make an entry thereof upon record, and shall file a memorandum thereof in some publick place in his office, to which all persons may resort without fee. 21]. c. 4. f. 2, 6.

In the name of the master of the crown office] From hence it follows, that informations exhibited by the attorney general, remain as they were at the common law. 2 Haw.

Rule to shew

caule.

16. And the general practice of the court of king's bench is, not to order an information to be filed, without first making a rule upon the defendant to shew cause to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of some offence of an enormous kind, or dangerous tendency. The defendant must be personally served with the rule, and if he do not at the day given for that purpose fatisfy the court by affidavits, that the substance of the charge is false or frivolous, or other reasonable cause against the prosecution, the court usually grants the information. Barl. Inform.

Process on an information.

17. By the 21 J. c. 4. The like process shall be awarded, upon an information by a common informer, as in an action of trespass vi & armis at the common law. f. 1.

And consequently, the process in all such suits must be by attachment, or pone per vadios, and after by distress infinite, where by the return the party appears to be suffi-

cient, otherwise by capias. 2 Haw. 284.

Process to be in- 18. And on every process upon an information by a common dersed. informer, shall be indersed as well the party's name that pur-

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fueth the process, as also the statute upon which the informa-

tion is grounded. 18 El. c. 5. f. 1.

19. But on a criminal information, it is the usual prac- Process on a eritice of the crown office, first, to award a subpæna; and af-minal informater the return thereof, if no appearance be entred in four days, and an affidavit be made of the fervice of the fubpæna, to make out a capias of course, where the defendants are informed against in their private capacity, and a difiringas, where they are fued as a corporation aggregate. 2 Haw. 284.

20. If any information, fuit, or action, shall be brought General iffue. against any person on a penal statute, the defendant may plead the general issue, and give the special matter in evidence.
21 J. c. 4. s. 4.

21. The court will not generally quash an information Information not upon motion, but the party must either plead, demur, quashed upon motion. or move in arrest of judgment. 1 Salk. 372. Str. 185,

22. But seeing that an information differs from an in- Certainty redictment in little more than this, that the one is found quired in an inby the oath of 12 men, and the other is not fo found but is only the allegation of the officer or person who exhibits it; whatfoever certainty is required in an indictment, the same at least is necessary also in an information; and confequently as all the material parts of the crime must be precisely found in the one, fo must they be precisely alledged in the other, and not by way of argument or recital. 2 Haw. 260, 1.

23. And therefore the statutes of jeofails (from J ay Not aided by the faille, I have failed), or the statutes that do remedy over-faile. fights in pleading, extend not to informations. Wood b. 4.

24. If an information contain feveral offences against a Information ftatute, and be well laid as to some of them, but defec-good as to part. tive as to the rest, the informer may have judgment for fo much as is well laid. 2 Haw. 266.

25. Generally, if a (common) informer shall willingly Costs against the delay his fuit, or discontinue, or be nonfuit, or shall have a plaintiff. verdict or judgment against him, he shall pay costs to the de-

fendant. 18 El. c. 5. f. 3.

And in the court of king's bench particularly, if the defendant shall appear and plead to issue, and the prosecutor shall not at his own costs, within a year after issue joined, procure the same to be tried, or if a verdict passes for the defendant, or the informer procure a noli prosequi to be entred, the said court of king's bench may award the defendant his costs, unless

the judge shall certify that there was a reasonable cause for exhibiting such information. And if the informer shall not, in three months after such costs taxed, and demand made, pay the same, the defendant shall have the benefit of the recognizance abovementioned, to compel him thereunto. 4 & 5 W. c. 18. f. 2.

Unless the judge shall certify] E. 13 G. 2. K. and Woodfall. Upon trial of an information for a libel, the jury acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for costs on this statute, which provides, that in cases where the defendant is acquitted, the court is authorized to award costs to the defendant, unless the judge shall at the trial certify there was a reasonable cause. In this case, no fuch certificate was asked; but it was infifted on for the profecutor, that it was discretionary in the court. The chief justice certified ore tenus, that it was a verdict against evidence; but then he and all the others held, that it was now too late to inquire into the probable cause; and that it was not discretionary, but compulsory upon them, where there was no certificate. So the defendant had his costs. Str. 1131.

Cofts against the defendant.

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26. But it feems to be in a great measure settled, that, an informer upon a popular statute shall in no case whatfoever have his costs, unless they be expresly given him by fuch statute; for it is certain, that he cannot recover them by the common law, for that doth not give costs in any case: neither can he recover them by the statute of Gloucester, which gives the demandant his costs in all cases wherein he shall recover his damages; for this seems to suppose some damage to have been done to the demandant in particular, which cannot be faid in any popular action. But it seems agreed, that an action on a statute by the party grieved, for a certain penalty given by fuch statute, is within the statute of Gloucester, because fuch penalty is intended him by way of recompence for his particular damage by the offence prohibited: and if he could recover that only, and no more by way of costs, it would be in most cases in vain for him to sue for it, fince the costs of suit would exceed it. But it is said, that no costs shall be recovered in an action on a statute, which gives no certain penalty to the party grieved, but only his damages in general, if such a statute be introductive of a new law, and give a remedy in a point not remediable at the common law; but there is not that inconvenience in this case, as in the former;

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because no certain sum being specified, the jury may give the plaintiff a full satisfaction by way of damages. 2 Haw.

27. No (common) informer shall compound or agree with Informer compete defendant, but after answer made in court, nor after pounding. answer, but by the order or consent of the court; on pain of being set on the pillory, in some market town next adjoining, in open market, for two hours, and of being disabled to be informer on any penal statute, and also of forfeiting 101. half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information. And the justices of assist, and justices of the peace in sessions, may hear and determine all offences against this act.

ner action, which former action shall be found to have been collustre; the plaintiff shall recover, as though no such action before had been bad: and if the defendant shall be convicted of such collusion, he shall be imprisoned two years, by process of capias and outlawry, and that as well at the king's suit, as of every other that will sue. 4 H. 7.

And no release of any common person, to any such party, whether before or after any action popular, or indictment of the same commenced or made, having the same action, shall be available to surcease the said action, indictment, process, or execution. id.

Form of an information qui tam.

Westmorland. D E it remembred, that A. I. of -I the county of ____ gentleman, who as well for our lord the now king as for himself doth prosecute, corneth before the justices of our said lord the king assigned to keep the peace in the faid county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at their general quarter sessions of the peace holden at - in and for the said county, the day of - in the - year of the reign of - in his proper person; and as well for the same lord the king, as for bimself, giveth the court here to understand and be informed, That A. O. late of - in the county aforesaid yeoman, on the - day of - in the year aforesaid, at - aforesaid, in the county aforesaid, not regarding the laws and statutes of our faid lord the king, but intending to - with force and arms [Here infert the offence with the same precision as in-

Information.

an indictment] against the form of the statute in that case made and provided: Whereupon the aforesaid A. I. as well for the said lord the king, as for himself, prayeth the advice of this court in the premisses; and that the aforesaid A. O. may forseit the sum of—according to the form of the statute aforesaid; and that he the same A. I. may have one moiety thereof, according to the form of the statute aforesaid; and also that the aforesaid A. O. may come here into this court, to answer concerning the premisses; and there are pledges of prosecuting, John Doe and Richard Roe. And hereupon it is commanded to the said A. O. that all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county, to answer as well to our said lord the king, as to the said A. I. who as well for the said lord the king, as for himself, doth prosecute, of and concerning the premisses, and surther to do and receive what the said court shall consider in this behalf.

Ingroffing. See Fozestalling.
Inmates. See Cottages.
Inns, Innkeepers. See Alehouses.
Infolvent debtors. See Debtors.

Inrollment.

O manors, lands, tenements, or hereditamens shall pass from one to another, whereby any estate of inheritance or freehold shall be made or take any estect in any person, or any use thereof to be made by reason only of any bargain and sale thereof, except the same bargain and sale be made by writing indented, sealed, and inrolled in one of the king's courts of record at Westminster; or else within the county where the lands lie, before the suston rotulorum, and two justices, and the clerk of the peace, or two of them at the least, whereof the clerk of the peace to be one: the same inrollment to be made in six months after date of the writings: Paying, where the land exceeds not 40 s. a year, 2 s. to wit, 12 d. to the justices and 12 d. to the clerk; and

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and where if exceeds 40 s. a year, then paying 5 s. half to the justices, and half to the clerk: and the clerk of the peace shall inroll and ingross the same in parchment: The same to be kept amongst the records of the county, 27 H. 8. 4. 16.

In the counties of Lancaster, Chester, and Durham, they may be inrolled in the respective courts there, or at the

affizes. 5 El. c. 26.

The inrolling of deed and wills of papifts, belongs to title Dopery.

Journeymen. See Servants, and Apprentices.

Issues. See Estreats, Jurozs.

Judgment.

F judgments, some are fixed and stated; as in Judgments cercases of treason, selony, præmunire, and mispritain.

their respective titles.

2. Others are discretionary and variable, according to Judgments varithe different circumstances of each case; Thus for crimes able. of an infamous nature, such as petit larceny, perjury, or forgery at common law, gross cheats, conspiracy not requiring a villainous judgment, keeping a bawdy house, bribing witnesses to stifle their evidence, and other offences of the like nature; it seems to be in a great measure lest to the prudence of the court to instict such corporal punishment, and also such fine, and binding to the good behaviour for a certain time, as shall seem most proper and adequate to the offence. I Haw.

3. The court may affels a fine, but cannot award any Judgment in the corporal punishment against a defendant, unless he be ac-offender's abfence.

tually present in court. 2 Haw. 446.

4. Where there are feveral defendants, a joint award of Judgment of a one fine against them all, is erroneous; for it ought to be joint fine. feveral against each defendant; for otherwise, one who hath paid his proportionable part, might be continued in prison till all the others have also paid theirs, which would

Judgment.

be in effect to punish him for the offence of another. 2 Haw. 446.

adgment in nitigation of

5. A fine is under the power of the court, during the term in which it is fet; and may be mitigated as shall be thought proper: but after the term, it admits of no alteration. 2 Haw. 446.

6. A judgment contrary to the verdict is void. Read. Judgment against Judgm.

Judgment by particular fta-

the verdict.

7. By many statutes peculiar punishments are appointed for several offences, as pillory, stocks, imprifonment and the like; and in all these cases, no room is left for the justices discretion, for they ought to give judgment, and to inflict the punishment in all the circumstances thereof, as such statutes do direct. Dalt. c. 188.

Jurozs.

NOTE; The statutes of the 4 & 5 W. c. 24. and 7 & 8 W. c. 32. hereafter following, were at first but temporary; but are referred to, and as it were adopted by the 3 G. 2. c. 25. Which act of the 3 G. 2. c. 25. is made perpetual by the 6 G. 2. c. 37. And all the faid three acts of 4 & 5 W. 7 & 8 W. and 3 G. 2. are required to be read at every Midfummer sessions.

Trial by juries is the Englishman's birth right, and is that happy way of trial, which notwithstanding all revolutions of times, hath been continued beyond all memory to this present day; the beginning whereof no history specifies, it being contemporary with the foundation of this state, and one of the pillars of it, both as to age and consequence. Tr. p. pais 3. Dalt.

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215.

Concerning which I will treat in the order following:

- I. Who may or may not be jurors.
- II. Of making and returning lifts of jurors.
- III. Of the theriff's fummoning and returning jurors.
- IV. Of the challenge of jurors.
- V. Of the demeanor of jurors in giving their verdict.
- VI. Of the indemnity and punishment of jurors.
- I. Who may or may not be jurors.

1. Mr. Hawkins says, it dots not seem to be any where Qualification of holden, that none but freeholders ought to be returned on grand jurymen. a grand jury. 2 Haw. 216, 217.

But in another place he says, that by the common law, every grand juryman ought to be a freeman. I

Haw. 215.

And L. Hale says, touching the yearly value of the estate of a grand juryman, he doth not find any thing determined; but freeholders they ought to be. 2 H. H.

But in Yorkshire, they are to have 801. a year, freehold

or copyhold. 7 & 8 W. c. 32. f. 8.

Also a grand juryman must be a lawful liege subject; and consequently, neither under attainder of any treason or felony, nor an alien, nor outlawed, whether for a criminal matter, or as some say, in a personal action; and from hence it seems, that any one who is under a prosecution for any crime, may by the common law, before he is indicted, challenge any of the persons returned on the grand jury, for the desect of any of the qualifications abovesaid. I Haw.

2. In the courts at Westminster, and city of London, Jurymen in the the jurors shall be housholders within the city, and have courts at Westlands, tenements, or personal estate, to the value of 1001.

3 G. 2. c. 25. f. 19, 20.

And by the 4 G. 2. c. 7. f. 3. Leaseholders in the county of *Middlesex*, where the improved rents amount to 501. a year, shall be liable to serve on juries.

At the affizes or

3. At the affizes or fessions in the country, every juror, other than strangers per medietatem linguæ in England, shall have in his own name, or in trust for him, within the county, 101. a year, and in Wales 61. a year, above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesse, or in rents, or in all or any of them, in fee simple, see tail, or for the life of themselves, or some other person; and if any of a lesser estate be returned, he may be discharged upon challenge, or on his own oath. 4 & 5 W. c. 24. f. 15. 3 G. 2. c. 25. s. 20.

And by the 3 G. 2. c. 25. f. 18. Persons having an estate in possession in land in their own right, of 201. a year above the reserved rent, being held by lease for 500 years or more, or for 90 years, or any other term, determinable on one or more lives, shall be liable to serve on

iuries.

From hence it appears, that lands freehold, copyhold, antient demesse, or leasehold, do render persons liable to ferve on juries. And some have thought that all lands are included under these denominations. And in Coles copyholder, p. 14. it is faid, that what land foever is not copyhold, is freehold. And in Galthr. 41. it is faid, that copyhold lands may differ in name, but not in nature; for although copyhold lands be specially so called, because holden by copy of court roll, and cuflomary lands by some special custom; yet they are all holden in one general kind, that is, by custom, and the diversity of their names doth not alter the nature of their tenure. Nevertheless, although all copyhold lands are customary, yet all customary lands are not copyhold, and consequently, as such, do not qualify a man to serve on juries. Of which kind of cultomary lands not being copyhold, the greater part of the county of Westmorland in particular doth confist. For which cause (and by reason of the number of persons disqualified by being quakers) the jurors in that county are in comparison but few. To remedy which inconvenience, it feemeth not unreasonable, that in the statutes limiting the qualification of jurors, amongst other denominations of tenure, the word customary should be inferted;

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bought, that children may commit fuch atrocious times with impunity. There are many crimes of the most heinous nature, such as in the present case the murder of young children, poisoning parents on masters, burning houses, and the like, which children are very capable of committing, and which they may in fome circumstances be under strong temptations to commit; and therefore, tho' the taking away the life of a boy of ten years old may favour of cruelty, yet as the example of this boy's punishment may be a means of deterring other children from the like offences, and as the sparing this boy merely on account of his age will probably have a quite contrary tendency, in justice to the publick. the law ought to take its course, unless there remaineth any doubt touching his guilt. In this general principle all the judges concurred. But two or three of them, out of great tenderness and caution, advised the chief justice to fend another reprieve for the priforer; suggesting, that it might possibly appear on further inquiry that the boy had taken this matter upon himself, at the instigation of some person or other, who hoped by this artifice to screen the real offender from justice. Accordingly, the chief justice did grant one or two more reprieves; and desired the justice who took the boy's examination, and also some other persons in whose prudebase he could confide, to make the strictest inquiry they could into the affair, and make the firstest inquiry they could into the affair, and make report to him. At length he receiving no further light, determined to fend no more reprieves, and to leave the prisoner to the justice of the law at the expiration of the last. But before the expiration of that reprieve, execution was respited till further order, by warrant from one of the fecretaries of state. And at the fummer affizes 1757, he had the benefit of his majesty's pardon, upon condition of his entring immediately into the fea fervice. 8, 101.70. . naibress a guardian. . no. no. no.

3. But within feven years of age, there can be no guilt Under feven. whatfoever of any capital offence: the infant may be chaflegiance, mas--with box cognic tized by his parents or tutors, but cannot be capitally punished, because he cannot be guilty; and if he be indicted for fuch an offence as is in its nature capital, he must be Canada make a

acquitted. 1 H. H. 19, 20.

4. An infant under 14, is prefumed by law, unable to Committing a commit a rape, and therefore it feems cannot be guilty of rape. it; and though in other felonies malitia supplet atatem in some cases, yet it seems as to this fact the law presumes VOL. II.

Infants.

him impotent, as well as wanting discretion. I H. H.

Forcible entry.

5. An infant may be guilty of forcible entry, in respect of personal actual violence. I Haw. 147. And the justices may fine him therefore: but yet it shall be good discretion in the juffices of the peace, to forbear the imprisonment of fuch infant. Dalt. c. 126.

Because it is faid, that he shall not be subject to corporal punishment, by force of the general words of any statute, wherein he is not expresly named. I Haw. 147.

Shall be liable to país.

6. But if one, who wants discretion, commit a trespass, damages for tref- against the person or possession of another, he shall nevertheless be compelled in a civil action to give satisfaction for the damage. I Haw. 2. I H. H. 15, 16.

May bring an appeal.

7. An infant may bring an appeal, although it take from the defendant the benefit of waging battle; but he must prosecute such appeal by a guardian. 2 Haw. 161, 162. Sonut a mount out with a

An appeal likewise may be brought against him, 2 Haw. 168. ni ver se distanti noque source sint maker be

Cannot be an approver.

8. An infant under the age of discretion cannot be an approver; because he cannot take the oath requisite in that cafe. 2 Haw. 205. The state one no should be solded

be a witness.

How far he may o. In case of rape, committed upon a child of 12 years old, fuch child may be fworn as evidence; yea if the be under that age, if it appear to the court that fhe knows and confiders the obligation of an oath, the may be fworn. And in case of evidence against witches, an infant of nine years old was fworn. 1 H. H. 634. Dalt. 378. uprisant to noussignment assent

be a juror.

Whether he may 10. An Infant before 21 years of age shall not be sworn in an inquest. 7 W. c. 32. f. 4. 1 Inft. 172.

Woman's age of dower, marriage, and chufing guardian.

11. A woman at 9 years of age may have dower; at 12 may confent to marriage; and at 14 is of age of discretion, and may chuse a guardian. I Inst. 78.

riage, and chu-Ling guardian.

Man's age of al- 12. A man is of age at 12 years to take the oath of allegiance in the torn or leet; and at 14 is of age of difcretion, may confent to marriage and chuse his guardian. 1 Inft. 78.

Cannot make a

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13. At 21, and not before, perfons may bind themfelves by any deed, and alien lands, goods and chattels, 1 Inft. 171.

Nor enter into secognizance.

14. Upon which ground infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their fureties only.

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17. But an infant may bind himself to pay for his ne- May contract for ceffary meat, drink, apparel, physick, and such like; and necessaries. also for his good teaching or instruction, whereby he may profit himself afterwards: but if he binds himself in an obligation or other writing, with a penalty for the payment of any of these, that obligation shall not bind him. I Inft. 172.

And in Earl's case, 1 Salk. 387. it is said, that an infant may buy necessaries, but cannot borrow money to buy; for he may misapply the money, and therefore the law will not trust him, but at the peril of the lender, who

must lay it out for him, or see it laid out.

16. Also other things of necessity shall bind him, as a May present to a presentation to a benefice; for otherwise the lapse shall benefice.

incur against him. 1 Inst. 172.

17. And infants seised of estates in trust, or by May convey in a way of mortgage, may make conveyances thereof, as court of equity. the courts of chancery or exchequer shall direct. 7 An. c. 19. 4 G. 3. c. 16.00 30 Valle Oliviani

18. And they may furrender leafes in the courts of May furrender chancery or exchequer, in order to renew the same. 29 in a court of equity.

G. 2. c. 31.

19. Also an infant hath, without consent of any May purchase other, capacity to purchase, for it is intended for his benefit; and at his full age, he may either agree thereunto, and perfect it, or without any cause to be alledged, waive, or disagree to the purchase: and so may his heirs after him, if he agree not thereunto after his full age. I Inft. 2.

20. The common law feems not to have determined May make a precisely, at what age one may make a testament of a will. personal estate: it is generally allowed, that it may be made at the age of 18, and some say under, for the common law will not prohibit the spiritual court in such cases.

1 Inft. 89. 1 H. H. 17.

21. A person is of age to be an executor at 17; and May be an exean administration of any one during the minority of an cutor. infant, ceafeth when the infant comes to that age. 5 Co.

Pigot's case. I H. H. 17.

22. Any person having child or children, under 21 May bequeath years of age, and not married, may by deed or will at the tuition of his teffed by two witnesses, dispose of the suffer of the children. tested by two witnesses, dispose of the custody and tuition of fuch child or children, until they shall be of the age of 21, or for a leffer time; and this, whether fuch parent be within or above the age of 21. 12 C. 2. t. 24. 1. 8.

Infants.

May fue by pro- 23. An infant cannot answer but by guardian; but he may fue either by his next friend or by guardian. 3 Salk. 196.

In what case he may release a debt.

24. If an infant of the age of 17 years release 2 debt, this is void; but if an infant make the debtor his executor, this is a good release in law of the action. I Inft. 264.

At what age he may be bound apprentice.

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25. By the 5 El. c. 4. Persons above the age of 10 years by their own consent and agreement, may be bound apprentices.

And by the 5 El. c. 5. Any person, above seven years

old, may be bound apprentice to the fea fervice.

By the 43 El. c. 2. No age is limited for the binding of parish apprentices; so that it seemeth they may be bound at the age of feven, when they ceafe to be nurse children, and consequently may be taken from the mother.

Infant appren-

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26. It shall be felony without benefit of clergy, to tice embezilling steal goods to the value of 40 s. out of an house, though the house be not broken open; but this shall not extend to apprentices under 15 years of age. 12 An. A. I. c. 7.

Infant fervant embezilling goods.

27. Servants above the age of 18, imbezilling their master's goods to the value of 40s. shall be punished as felons. 21 H. 8. c. 7.

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Information.

king.

At the fuit of the party.

Information at 1. Informations are of two kinds; 1. Such as are the fuit of the king: And, 2. Such as are partly the fuit of the king, and partly the fuit of the party; which are commonly called informations qui tam, from those words in the information when the proceedings were in latin, qui tam pro domino rege quam pro feipfo, &c. 2 Haw. 259.

Private action upon a statute.

Action popular.

2. Of near affinity to an information qui tam, is an action upon a statute: which is either a private action, which is, when an action is given upon a statute to the king, and to the party grieved only; or, a popular action, which is, where the action is given to the king, or to any one that will fue for the king and himself. Wood b. 4. c. 4.

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3. But if the king commenceth his fuit before the In what case the informer, the king shall have the whole forfeiture (be-king may have cause in such case he also is the informer); and he may, the whole pebefore the informer begins his fuit, release the penalty to the offender, and bar all others; but if after a popular action is brought by the informer, the king's attorney will enter ulterius non vult prosequi, the informer may prosecute for his part. Wood b. 4. c. 4.

4. Where a matter concerns the publick govern- In what cases an ment, and no particular person is intitled to an action, information will there an information will lie. 18 El. c. 5. f. 1. 1 Salk.

5. An information lies, at the common law, for a great variety of crimes less than capital, as batteries, cheats, perjuries, riots, extortions, nusances, contempts, and fuch like; and also it lies in very many cases by statute, wherein the offender is liable to a fine or other penalty.

Finch 340. 2 Haw. 260.

6. And in general, it feems that of common right an information at the fuit of the king, or an action in the nature thereof, may be brought for offences against statutes, whether they be mentioned by such statutes or not, unless other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 Haw. 260.

7. But an information or action qui tam will not lie on any flatute, which prohibits a thing as being an immediate offence against the the publick good in general, under a certain penalty, unless the whole or part of such penalty be expresly given to him who will fue for it; because otherwise it goes to the king, and nothing can be demanded by the party: But where such statute gives any part of fuch penalty to him who will fue for it by action or information, any one may bring fuch action or information, and lay his demand, as well for our lord the king, as for himself. 2 Haw. 256.

8. Also where a statute prohibits or commands a thing, the doing or omiffion whereof is an immediate danger to the party, and also highly concerns the peace, fafety, or good government of the publick, or the honour of the king, or of his supreme courts of justice, it seems to be the general opinion, that the party grieved may bring his action qui tam on such statute. 2. Haw, 265.

Concral

Information.

In what time it thall be brought.

9. By the 31 El. c. 5. All actions, suits, bills, indictments, or informations on any penal statute, whereby the forfeiture is limited to the king, shall be brought within two years
after the offence committed; if limited to the king, and to any
other who shall prosecute, then within one year; and in default
of such prosecution, then to be brought for the king, in two years
after that year ended. Provided, that if they are limited by
statute to be brought within shorter time, then they shall be
brought within such time limited. s. 5. 6.

On any penal statute But if an offence prohibited by a penal statute, be also an offence at common law; the profecution of it, as of an offence at common law, is no way

restrained hereby. 2 Haw. 272.

To any other who shall prosecute That is, to a common informer; and therefore the party grieved is not within the restraint of this statute, but may sue in the same manner as before. 2 Haw. 272.

Two informations on the fame day.

10. If two informations be exhibited on the same day, for the same offence, they mutually abate one another. 2 Haw. 275.

In what county it shall be laid.

11. By the 21 J. c. 4. All offences against any penal statute, for which any common informer may ground a popular action, bill, plaint, suit, or information, before the judges of assize, or justices of the peace in their general or quarter sessions (having power to hear and determine the same), shall be prosecuted in the county where they were committed, and not elsewhere: and if the offence is not proved to have been committed in the same county, the defendant shall be found not guilty. 1, 1, 2.

Provided, that informations, suits, or actions, against popish recusants, or persons charged with maintenance, champerty, or buying of titles, may be laid in any county.

f. 5

Against any penal statute H. 8 W. K. and Gaul. Hold Ch. J. said, ten judges had agreed that this statute doth not extend to any offence created since; so that prosecutions on subsequent penal statutes are not restrained thereby; but this statute is as to them, as it were repealed protants. I Salk. 372.

For which any common informer may ground a popular action.] Therefore this extends not to any fuit by a party grieved, or by the attorney general; but only to those brought by common informers. 2 Haw. 269, 270.

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General or quarter sessions, having power to hear and determine the same Yet this gives no jurisdiction to justices of the peace, which they had not before; but only appoints, that where informations might have been brought in the courts at Westminster or before justices of the peace, fuch informations shall be now brought before justices of the peace only. Cro. Car. 112.

In the county where they were committed] H. 7 G. Smith and Potter. In the king's bench. In a qui tam on the 5 Eliz. for exercifing a trade, without an apprenticeship, it was moved to stay the proceedings, because the nominal plaintiff had released, and and the fact was laid at Cambridge, whereas the jurisdiction of the king's bench is at last settled to be restrained by the 21 J. c. 4. to actions arising in the county where the king's bench fits, fo that if they were to go on to trial, the plaintiff could have no effect of his fuit. And of this opinion was the court, and they made a rule that proceedings should be stayed. Str. 415.

And not elsewhere But where a subsequent statute gives a remedy for the recovery of a penalty in any court of record generally, it fo far impliedly repeals this restraint, and consequently leaves the informer at his liberty to sue in the courts at Westminster. 2 Haw. 270.

Also, where a statute limits suits by an informer qui tam, to other courts than those of Westminster hall; yet any one may, by construction of law, exhibit an information in the exchequer, for the whole penalty, for the use of the king. 2 Haw. 268.

12. If jurisdiction be given to the sessions to hear sessions hath not and determine, and it is not faid by information; this power without shall be by indictment, and not information. Gro. Car. express words.

13. By the 18 El. c. 5. Upon every information which Time of exhibitshall be exhibited by a (common) informer, except for main-ing the informatenance, champerty, buying of titles, or embracery; a note tion to be enshall be made of the day, month, and year of the exhibiting thereof; and it shall be taken to be of record from that time forward and not before: and no process shall be issued on such information, till it be exhibited in form aforefaid. f. I.

14. And by the 21 J. c. 4. No officer shall enter any Oath to be made information, bill or plaint, count or declaration, till the in- on exhibiting the former bath made oath before some of the judges of the court, that the offence was not committed in any other county, and that

Information.

he believeth in his conscience, that the offence was committed within a year before the information or fuit; the oath to be there entered of record. f. 3.

Recognizance to be given.

15. And, in the court of king's bench, the clerk of the crown shall not (except by order of court) exhibit or receive any information in the name of the master of the crown office, for trespasses, batteries, or other misdemeanors, or issue any process thereupan, before be shall have taken, or shall have delivered to him a recognizance from the prosecutor, with his place of abode, title, or profession to be entred, to the perfon against whom the information is exhibited, in the penalty of 201. that he will effectually projecute such information, and abide by and observe such orders as the said court shall direct; which recognizance the faid clerk of the crown, and also every justice of the peace where the cause of such information shall arise, are impowered to take; after the taking or receipt whereof, he shall make an entry thereof upon record, and shall file a memorandum thereof in some publick place in his office, to which all persons may resort without fee. 21 J. c. 4. f. 2, 6.

In the name of the master of the crown office] From hence it follows, that informations exhibited by the attorney general, remain as they were at the common law. 2 How.

Rule to fhew caufe.

16. And the general practice of the court of king's bench is, not to order an information to be filed, without first making a rule upon the defendant to shew cause to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of fome offence of an enormous kind, or dangerous tendency. The defendant must be personally served with the rule, he do not at the day given for that purpole fatisfy the court by affidavits, that the fubstance of the charge is false or frivolous, or other reasonable cause against the profecution, the court usually grants the information. Barl, Inform.

-a an tal 201 x Process on an information.

17. By the 21 J. c. 4. The like process shall be awarded, upon an information by a common informer, as in an action of trespass vi & armis at the common taw.

And confequently, the process in all such suits must be by attachment, or pone per vadios, and after by diffress infinite, where by the return the party appears to be fuffi-

cient, otherwise by capias. 2 Haw. 284.

18. And on every process upon an information by a common Process to be ininformer, shall be indorsed as well the party's name that purdorfed. fueth Sueth tion I tice

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fueth the process, as also the statute upon which the informa-

tion is grounded. 18 El. c. 5. f. 1.

19. But on a criminal information, it is the usual prac- Process on a critice of the crown office, first, to award a fubpoena; and affer the return thereof, if no appearance be entred in four days, and an affidavit be made of the fervice of the fubpæna, to make out a capias of course, where the defendants are informed against in their private capacity, and a distringas, where they are fued as a corporation aggregate. 2 Haw. 284.

20. If any information, fuit, or action, shall be brought General iffue. against any person on a penal statute, the defendant may plead the general issue, and give the special matter in evidence.

21 J. c. 4. f. 4.

21. The court will not generally quash an information Information not upon motion, but the party must either plead, demur, quashed upon or move in arrest of judgment, 1 Salk. 372. Str. 185,

22. But seeing that an information differs from an in- Certainty redictment in little more than this, that the one is found formation. by the oath of 12 men, and the other is not fo found but is only the allegation of the officer or person who exhibits it; whatfoever certainty is required in an indictment, the same at least is necessary also in an in-formation; and consequently as all the material parts of the crime must be precisely found in the one, so must they be precisely alledged in the other, and not by way of argument or recital. 2 Haw. 260, 1.

23. And therefore the statutes of jeofails (from " ay Not aided by the faille, I have failed), or the statutes that do remedy over-fails.

fights in pleading, extend not to informations. Wood b. 4.

24. If an information contain feveral offences against a Information statute, and be well laid as to some of them, but defec-good as to part. tive as to the rest, the informer may have judgment for so much as is well laid. 2 Haw. 266.

25. Generally, if a (common) informer shall willingly Costs against the delay his fuit, or discontinue, or be nonsuit, or shall have a plaintiff, verdict or judgment against him, he shall pay costs to the de-

fendant. 18 El. c. 5. f. 3.

And in the court of king's bench particularly, if the defendant shall appear and plead to issue, and the prosecutor shall not at his own costs, within a year after issue joined, procure the same to be tried, or if a verdict passes for the defendant, or the informer procure a noli prosequi to be entred, the said court of king's bench may award the defendant his costs, 'unless

Information.

the judge shall certify that there was a reasonable cause for exhibiting such information. And if the informer shall not, in three months after such costs taxed, and demand made, pay the same, the defendant shall have the benefit of the recognizance abovementioned, to compel him thereunto. 4 & 5 W. c. 18. s. 2.

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Unless the judge shall certify] E. 13 G. 2. K. and Woodfall. Upon trial of an information for a libel, the jury acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for costs on this statute, which provides, that in cases where the defendant is acquitted, the court is authorized to award costs to the defendant, unless the judge shall at the trial certify there was a reasonable cause. In this case, no fuch certificate was asked; but it was infifted on for the profecutor, that it was discretionary in the court. The chief justice certified ore tenus, that it was a verdict against evidence; but then he and all the others held, that it was now too late to inquire into the probable cause; and that it was not discretionary, but compulsory upon them, where there was no certificate. So the defendant had his costs. Str. 1131.

Costs against the defendant.

26. But it seems to be in a great measure settled, that, an informer upon a popular statute shall in no case whatfoever have his costs, unless they be expresly given him by fuch statute; for it is certain, that he cannot recover them by the common law, for that doth not give costs in any case: neither can he recover them by the statute of Gloucester, which gives the demandant his costs in all cases wherein he shall recover his damages; for this seems to suppose some damage to have been done to the demandant in particular, which cannot be faid in any popular action. But it feems agreed, that an action on a flatute by the party grieved, for a certain penalty given by fuch statute, is within the statute of Gloucester, because fuch penalty is intended him by way of recompence for his particular damage by the offence prohibited: and if he could recover that only, and no more by way of costs, it would be in most cases in vain for him to sue for it, fince the costs of suit would exceed it. But it is said, that no costs shall be recovered in an action on a statute, which gives no certain penalty to the party grieved, but only his damages in general, if such a statute be introductive of a new law, and give a remedy in a point not remediable at the common law; but there is not that inconvenience in this case, as in the former;

because no certain sum being specified, the jury may give the plaintiff a full satisfaction by way of damages. 2 Haw.

27. No (common) informer shall compound or agree with Informer comthe defendant, but after answer made in court, nor after pounding, answer, but by the order or consent of the court; on pain of being set on the pillory, in some market town next adjoining, in open market, for two hours, and of being disabled to be informer on any penal statute, and also of forfeiting 101. half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information. And the justices of assign, and justices of the peace in sessions, may hear and determine all offences against this act.

18 El. c. 5. s. 4.

28. And if the defendant plead a recovery by a for-Collusive action, mer action, which former action shall be found to have been collustre; the plaintiff shall recover, as though no such action before had been had: and if the defendant shall be convicted of such collusion, he shall be imprisoned two years, by process of capias and outlawry, and that as well at the king's suit, as of every other that will sue. 4 H. 7. C. 20.

And no release of any common person, to any such party, whether before or after any action popular, or indictment of the same commenced or made, having the same action, shall be available to surcease the said action, indictment, process, or execution. id.

Form of an information qui tam.

Westmorland: D E it remembred, that A. I. of --- in the county of ____ gentleman, who as well for our lord the now king as for himself doth prosecute, cometh before the justices of our said lord the king assigned to keep the peace in the faid county, and also to bear and determine divers felonies, trespasses, and other misdemeanors in the faid county committed, at their general quarter fessions of the peace holden at - in and for the faid county, the day of - in the - year of the reign of - in his proper person; and as well for the same lord the king, as for himself, giveth the court here to understand and be informed, That A. O. late of - in the county aforesaid yeoman, on the --- day of --- in the year aforesaid, at --- aforesaid, in the county aforefaid, not regarding the laws and statutes of our faid lord the king, but intending to - with force and arms [Here insert the offence with the same precision as in

Information.

an indictment] against the form of the statute in that case made and provided: Whereupon the aforesaid A. I. as well for the said lord the king, as for himself, prayeth the advice of this court in the premisses; and that the aforesaid A. O. may forfeit the sum of according to the form of the statute aforesaid; and that he the same A. I. may have one moiety thereof, according to the form of the statute aforeand also that the aforesaid A.O. may come here into this court, to answer concerning the premisses; and there are pledges of profecuting, John Doe and Richard Roe. And hereupon it is commanded to the said A. O. that all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be bolden for the faid county, to answer as well to our said lord the king, as to the faid A. I. who as well for the faid lord the king, as for himself, doth prosecute, of and concerning the premisses, and further to do and receive what the said court shall consider in this behalf.

Ingroffing. See Fozestalling.
Inmates. See Cottages.
Inns, Innkeepers. See Alehouses.
Infolvent debtors. See Debtors.

Inrollment.

O manors, lands, tenements, or hereditamens shall pass from one to another, whereby any estate of inheritance or freehold shall be made or take any essect in any person, or any use thereof to be made by reason only of any bargain and sale thereof, except the same bargain and sale be made by writing indented, sealed, and inrolled in one of the king's courts of record at Westminster; or else within the county where the lands lie, before the custor rotulorum, and two justices, and the clerk of the peace, or two of them at the least, whereof the clerk of the peace to be one: the same inrollment to be made in six months after date of the writings: Paying, where the land exceeds not 40 s. a year, 2 s. to wit, 12 d. to the justices and 12 d. to the clerk and

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and where it exceeds 40 s. a year, then paying 5 s. half to the justices, and half to the clerk; and the clerk of the peace shall inroll and ingross the same in parchment: The same to be kept amongst the records of the county. 27 H. 8. c. 16.

In the counties of Lancaster, Chester, and Durham, they may be inrolled in the respective courts there, or at the

affizes. 5 El. c. 26.

The inrolling of deed and wills of papifts, belongs to pointed for feveral offeness, as pillery, grayoff

forment and the like; and in all their cases no room Journeymen. See Servants, and Apprentices. Issues. See Estreats, Juross. and

Judgment.

F judgments, some are fixed and stated; as in Judgments cer-cases of treason, selony, præmunire, and mispri-tain. fions; the particular forms of which may be feen under

their respective titles.

2. Others are discretionary and variable, according to Judgments varithe different circumstances of each case; Thus for crimes able. of an infamous nature, fuch as petit larceny, perjury, or forgery at common law, gross cheats, conspiracy not requiring a villainous judgment, keeping a bawdy house, bribing witnesses to stifle their evidence, and other offences of the like nature; it feems to be in a great measure left to the prudence of the court to inflict fuch corporal punishment, and also such fine, and binding to the good behaviour for a certain time, as shall feem most proper and adequate to the offence. I Haw. 445.

3. The court may affess a fine, but cannot award any Judgment in the corporal punishment against a defendant, unless he be ac-offender's ab-

tually present in court. 2 Haw. 446.

4. Where there are several defendants, a joint award of Judgment of a one fine against them all, is erroneous; for it ought to be joint fine. feveral against each defendant; for otherwise, one who hath paid his proportionable part, might be continued in prison till all the others have also paid theirs, which would

Judgment.

be in effect to punish him for the offence of another. 2 Haw. 446.

Judgment in mitigation of fines. 5. A fine is under the power of the court, during the term in which it is set; and may be mitigated as shall be thought proper: but after the term, it admits of no alteration. 2 Haw. 446.

Judgment against the verdict.

verdict. Judgm.

Judgment by particular flatutes. 6. A judgment contrary to the verdict is void. Read.

7. By many statutes peculiar punishments are appointed for several offences, as pillory, stocks, impriforment and the like; and in all these cases, no room is lest for the justices discretion, for they ought to give judgment, and to instict the punishment in all the circumstances thereof, as such statutes do direct. Dalt. c. 188.

Jurozs.

and 7 & 8 W. c. 32. hereafter following, were at first but temporary; but are referred to, and as it were adopted by the 3 G. 2. c. 25. Which act of the 3 G. 2. c. 25. is made perpetual by the 6 G. 2. c. 37. And all the said three acts of 4 5 W. 7 5 8 W. and 3 G. 2. are required to be read at every Midfummer sessions.

Trial by juries is the Englishman's birth right, and is that happy way of trial, which notwithstanding all revolutions of times, hath been continued beyond all memory to this present day; the beginning whereof no history specifies, it being contemporary with the foundation of this state, and one of the pillars of it, both as to age and consequence. Tr. p. pais 3. Dalt.

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Concerning which I will treat in the order following:

- I. Who may or may not be jurors.
- II. Of making and returning lists of jurors.
- III. Of the sheriff's summoning and returning jurors.
- IV. Of the challenge of jurors.
- V. Of the demeanor of jurors in giving their verdict.
- VI. Of the indemnity and punishment of jurors.
- I. Who may or may not be jurors.

1. Mr. Hawkins fays, it dots not feem to be any where Qualification of holden, that none but freeholders ought to be returned on grand jurymen, a grand jury. 2 Haw. 216, 217.

But in another place he fays, that by the common law, every grand juryman ought to be a freeman. I

Haw. 215.

And L. Hale fays, touching the yearly value of the effate of a grand juryman, he doth not find any thing determined; but freeholders they ought to be. 2 H. H.

But in Yorkshire, they are to have 801. a year, freehold

or copyhold. 7 & 8 W. c. 32. f. 8.

Also a grand juryman must be a lawful liege subject; and consequently, neither under attainder of any treason or selony, nor an alien, nor outlawed, whether for a criminal matter, or as some say, in a perfonal action; and from hence it seems, that any one who is under a prosecution for any crime, may by the common law, before he is indicted, challenge any of the persons returned on the grand jury, for the desect of any of the qualifications abovesaid. I Haw.

2. In the courts at Westminster, and city of London, Jurymen in the the jurors shall be housholders within the city, and have courts at Westlands, tenements, or personal estate, to the value of 1001.

3 G. 2. c. 25. f. 19, 20.

And by the 4 G. 2. c. 7. f. 3. Leaseholders in the county of *Middlesex*, where the improved rents amount to 50l. a year, shall be hable to serve on juries.

At the affizes or

3. At the affizes or sessions in the country, every juror, other than strangers per medietatem linguae in England, shall have in his own name, or in trust for him, within the county, 101. a year, and in Wales 61. a year, above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesses, or in rents, or in all or any of them, in see simple, see tail, or for the life of themselves, or some other person: and if any of a lesser estate be returned, he may be discharged upon challenge, or on his own oath. 4 & 5 W. c. 24. f. 15. 3 G. 2. e. 25. f. 20.

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And by the 3 G. 2. c. 25. f. 18. Persons having an estate in possession in land in their own right, of 201. a year above the reserved rent, being held by lease for 500 years or more, or for 90 years, or any other term, determinable on one or more lives, shall be liable to serve on

From hence it appears, that lands freehold, copyhold, antient demesse, or leasehold, do render persons liable to ferve on juries. And some have thought that all lands are included under these denominations. And in Coke's not copyhold, is freehold. And in Galthr. 41, it is faid, that copyhold lands may differ in name, but not in nature; for although copyhold lands be specially so called, because holden by copy of court roll, and customary lands by some special custom; yet they are all holden in one general kind, that is, by custom, and the diversity of their names doth not alter the nature of their tenure. Nevertheless, although all copyhold lands are customary, yet all customary lands are not copyhold, and consequently, as such, do not qualify a man to serve on juries. Of which kind of customary lands not being copyhold, the greater part of the county of Westmorland in particular doth consist. For which cause (and by reason of the number of persons disqualified by being quakers) the jurors in that county are in comparison but few. To remedy which inconvenience, it feemeth not unreasonable, that in the statutes limiting the qualification of jurors, amongst other denominations of tenure, the word customary should be inferted;

inferted; for why should a copyholder of 101. a year be obliged to serve, and a customary tenant of 1001. a year be exempted?

4. As to the strangers per medietatem linguae above- Jurors on trials mentioned, it is enacted by the 28 Ed. 3. c. 13. that of foreigners, in inquests to be taken amongst aliens and denizens, before any judges, one half of the inquest shall be denizens, and the other half aliens, if so many there be in the place who are not parties; if not, then so many as there are.

And by the 27 Ed. 3. st. 2. c. 8. Before the mayor of the staple, if both parties be strangers, the inquests shall be taken by strangers; if both be denizens, by denizens; if the one party be denizen, and the other alien, half of the jury shall be denizens, and half aliens.

And these aliens need not have any qualification by their estate. 8 H. 6. c. 29.

But it feems that the English half of the jury ought to have estates of the same value as in other cases. 2 Haw.

But by the 13 & 14 C. 2. c. 11. f. 11. In actions concerning tonnage and poundage, or ships or goods to be forseited by reason of unlawful importation or exportation, there shall not be any party jury, but such only as are natural born subjects.

5. In towns corporate: Trials of felons shall be by men Jurors in towns worth 401. in goods, though they have no freehold. 23 corporate. H. 8. c. 13.

And in 3 Salk. 81. it is faid, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the statutes which require jurors to be of such and such sufficiency, do generally except cities, boroughs, and towns corporate.

6. In the torn: Jurors shall have 20s. a year freehold; In the torn.

or 26s. 8d. copyhold. 1 R. 3. c. 4.

7. In the leet: It is faid by fome books, that any per-In the leet fon happening to be present at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the precincts of the leet, or not: by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. 2 Haw. 69.

Vol. II. Gg 8. The

On the coroner's 8. The 'coroner's jury, upon inquests taken before him, are to be of the neighbouring towns; but no qualification by estate is required by any statute. 2 H.

fentments.

On other jurors to inquire of the concealments of other concealing pre- inquests, shall have lands of 40 s. a year. 3 H. 7.

forcible entry.

On inquiries of 10. Jurors to inquire of forcible entry or detainer, shall have lands or tenements of 40s. a year. 8 H. 6.

On inquiries of riots.

11. Jurors to inquire of riots, shall have 20s. a year, charter land, or freehold; or 26s. 8d. copyhold. 19 H. 7. c. 13.

In Yorkshire.

12. In Yorkshire: No person having 1501. a year, of fuch estate as will qualify him to serve on juries, shall be fummoned to the sessions; but only persons less able to bear the expence of attending the affizes. I An. st. 2. c. 13. f. 3. And if he doth serve at the sessions it shall not fatisfy his turn, but he shall attend the assizes neverthelefs.: 10 Ann. c. 14. f. 6.

Persons under

13. Young men, under 21 years of age, shall not serve

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upon juries. 7 W. c. 32. f. 4.

Persons above

14. Old men above 70, persons continually sick, or age, infirm, ab- being diseased at the time of the summons, or not dwelling in the county, shall not be put in juries of petit affizes; on pain of the sheriff paying damages to the party grieved, and being amerced to the king. 13 Ed. 1. A. I. c. 38.1 ou aved vant depost ge

And the equity of this statute, and also the reason of the thing, feem plainly so far to extend to grand juries, that if it shall appear, that any of the persons abovementioned be returned on a grand jury, the court will eafily excuse their non appearance. But it seems clear, that any fuch persons being returned on a grand jury, may lawfully serve upon it if they think fit. 2 urous max

Haw. 216.

In what cafe women shall be Jurors.

15. The jury ought to be men; yet there shall be a jury of women, to try if a woman be enfient, upon the writ de ventre inspiciendo. Tr. p. pais 86.

Surgeons.

16. By the 5 H. 8. c. 6. and 18 G. 2. c. 15. Freemen of the company of furgeons in London, are exempted from ferving upon juries.

Apothecaries,

17. And by the 6 & 7 W. c. 4. Apothecaries, within London and feven miles thereof, being free of the company; and country apothecaries, who have ferved feven years apprenticeship, fhall be exempted from ferving on juries, and their return shall be void, unless they shall voluntarily consent to serve. 6 & 7 W.

18. Clergymen cannot be impanelled upon juries. Clergymen.

19. Diffenting teachers, qualified under the toleration Diffenting teachers. act, are exempted from ferving on juries. 1 W. c. 18. teachers.

20. Also quakers. 7 & 8 W. c. 34. f. 6.

21. By the 4 & 5 W. c. 24. S. 21. No writ de non po- Writs of ex-nendis in assiss & juratis, shall be granted, unless upon emption oath made, that the suggestions upon which it is granted, are true.

And the jurors ought to come in person and claim their privilege; for the sheriff cannot return it. Tr. p.

pais 87.

II. Of making and returning lists of jurors.

1. The justices at Midfummer sessions, shall iffue Precepts to the forth their warrants (A) under the hands and feals of high and petty two or more of them, to the high constables, requiring them to iffue forth their precept to the petty constables, thereby directing and requiring them to make and return true lists in writing, of the names and places of abode, of all persons within their respective constablewicks, qualified to serve on juries, with their titles and additions, between the ages of 21 and 70. High constastable failing to iffue his precept, shall forfeit 101. on conviction at the affizes or sessions. 7 & 8 W. c. 32. f. 4. 8 & 9 W. c. 10. 3 & 4 An. c. 18. f. 5.

2. The petty constables, on request to any parish of- Petty constables ficer who shall have in his custody any of the rates for may inspect the the poor or land tax, shall have free liberty to inspect fuch rates, and take from thence the names of free-

holders, copyholders, or other persons qualified to serve on juties, dwelling within their respective precincts. 3 G. 2. c. 25. f. 1.

3. And shall yearly, 20 days at least before Michael- Lifts to be put mas, upon two or more fundays, fix on the door of the upon the church church, chapel, and every other publick place of reli-door. gious worship, an exact list of persons intended to be returned; and shall leave at the same time a duplicate G g 2

thereof, with a churchwarden or overfeer, to be perused by the parishioners without fee, to the end that notice may be given of persons qualified who are omitted. or of persons inserted by mistake who ought to be omitted. 3 G. 2. c. 25. J. 1.

Penalty on the petty conftable, for inferting perfons wrongfully.

4. And if such petty constable shall wilfully omit any person who ought to be inserted, or insert any one who ought to be omitted, or shall take any reward for omitting or inferting any person; he shall forfeit 20 s. on conviction before one justice, on confession, or oath of one witness; half to the informer and half to the poor of the parish or place, for which the list is returned: if not paid in five days, to be levied by diffress. And fuch justice shall, in writing under his hand, certify the same to the next sessions; who shall direct the clerk of the peace to insert or strike out the name of fuch person so inserted or omitted wrongfully. 3 G. 2. c. 25. f. 2.

Lifts to be delisered in at the 5. The faid petty constables, at Michaelmas sessions, shall deliver in the lists in open court. 7 & 8 W.

c. 32. f. 4. Or instead of this, after they have compleated their lifts, it shall be sufficient if they subscribe the same in the presence of one justice, and at the same time attest the truth thereof upon oath to the best of their knowledge or belief: And then the faid lifts, being first figned by the justice, and subscribed as afore-faid, shall be delivered by the said petty constables to the high constables, who shall deliver in the same at the faid fessions in open court, attesting at the fame time upon oath the receipt of fuch lifts from the petty constables, and that no alteration hath been made therein fince their receipt thereof. 3 G. 2. c. 25.

Penalty on petty returning lifts.

6. The constable failing to make return, shall forfeit constables for not 51. to the king, to be recovered by bill, plaint, or information. 7 & 8 W. c. 32. J. 4.

Persons not qualified, how dif-

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7. And if any person, not qualified, shall find his name mentioned in such list, and the person required to make fuch lift shall refuse to omit him, or think it doubtful whether he ought to be omitted; the justices at the sessions to which the lists shall be returned, on fatisfaction from the oath of the party complaining, or other proof that he is not qualified, may order his name to be struck out, or omitted to be entred in

the book. 3 G. 2. c. 25. f. 1.

8. The justices shall then cause the lists to be fairly Lists to be entred by the clerk of entred in a book by the clerk of the peace, to be by the peace; him provided and kept for that purpose amongst the records of the sessions. 7 & 8 W. c. 32. s. 4.

9. Clerk of the peace neglecting his duty herein, shall on pain of 2014

forfeit 201, to him who shall fue by indictment at the

fessions. 3 G. 2. c. 25. f. 2.

10. Duplicates of the faid lifts, when delivered in Duplicates thereat the sessions, and entred in such book to be kept of to be deliver-by the clerk of the peace for that purpose, shall during the faid fessions, or within ten days after, be delivered by the clerk of the peace to the theriff. 3 G. 2. c. 25. f. 2.

11. And the sheriff shall immediately take care, that The same to be the names shall be entred alphabetically, with their addi-entred by the tions and places of abode, in a book to be kept by him

for that purpose. 3 G. 2. c. 25. s. 2.

12. And if the sheriff shall summon and return any Sheriff shall reperson to the assizes, whose name is not in the dupli-turn none but those in the ducates; the judge may on examination in a summary way, plicates. fine him not exceeding 101. nor less than 40s. 3 G. 2. £. 25. f. 3.

III. Of the theriff's fummoning and returning jurors.

1. By a clause in the commission of the peace, it is Sherish to sumsaid, - We command our sheriff, that at certain days, mon jurors to which you (the justices) shall make known to him, he cause to come before you so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth shall be the better known and inquired into.

2. It feems that justices of the peace may not order Whether the a jury to be returned immediately, nor on the fame feffions may orday, for the trial of a prisoner arraigned before them, returned immeas justices of gaol delivery may, unless the crime amount diately. to felony, or the party consent to be tried immediately.

2 Haw. 406.

3. Also it seems that a jury may not regularly be Whether by returned before justices of the peace in their sessions, court without by a bare award of the court, as before justices of precept.

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Jurors.

gaol delivery; but that there ought to be a particular precept to the sheriff for that purpose, 2 Haw.

How they may do the same in sales of felony.

405, 406. 4. But in cases of selony it is agreed (4 Inst. 164.) and is the usual practice, after the prisoners are arraigned and have pleaded to the country, for the juflices to iffue a precept to the sheriff, in nature of a venire facias, which may bear teste the same day that the prisoners plead, commanding the sheriff to return 24 jurors, to try the iffue upon fuch a day; or they may make it returnable the same day that the prisoner pleads, as at one of the clock in the afternoon, or the like; and this precept must be in the name, and under the seals of the justices, or two of them (12.) and not barely by an award upon the roll. 2 H. H. 261, 262.

Form of the venire facias.

5. The writ of venire facias by the statute of the 4 5 W. c. 24. shall be after this form: The king, &c. We command; &c. that you cause to come before, &c. twelve free and lawful men of the vicinage of A. every of whom shall have 101. of land, tenements, or rents, by the year, at least; by whom, &c. and who neither, &c.

Why the jurors

f. 15. (B)
6. The reason why they are required to come from shall be returned the vicinage, is, for that the neighbours are prefumed of the neighbour to know what is done in the neighbourhood. I Inft.

158. But yet this is not necessarily required; for they of one fide of the county, are by law of the neighbourhood, to try an offence of the other fide of the county. 2 H. H. 264.

And by the 4 An. c. 16. f. 6, 7. and 24 G. 2. c. 18. f. 3. to prevent challenges for default of hundredors, every venire facias for the trial of an issue in any action in the courts at Westminster, or in any action or information on a penal statute, shall be awarded of the body of the county where fuch iffue is triable.

How many shall be returned and

7. And although the words of the writ be twelve, yet by the ancient course, the sheriff must return 24, for the expedition of justice; for if twelve only should be returned, a man would feldom have a full jury appear; and in this case usage and custom makes the law. 2 H. H. 263. Read. Jur.

But the general precept that issues before a session is, to return 24, and commonly the sheriff returns upon

that precept 48. 2 H. H. 263.

But in issues of nisi prius, the sheriff shall, upon his return of the writ of venire facias juratores (unless in causes intended to be tried at bar, or where a special jury shall be appointed) annex a panel to the faid writ, containing the christian and furname, additions, and places of abode, of a competent number of jurors, the names of the same persons to be inserted in the panel annexed to every venire facias, for the trial of all issues at the fame affizes; which number of jurors shall be not less than 48 in any county, nor more than 72, unless the judges shall order otherwise. And the writs of habeas corpora juratorum, or distringas, subsequent to such writ of venire facias juratores, need not have inferted in the bodies of fuch writs the names of all the perfons contained in fuch panel, but it shall be sufficient to infert in the mandatory parts of fuch writs respectively, the several bodies of the persons named in the panel annexed to this writ, or words of the like import, and to annex to fuch writs respectively panels, containing the same names as were returned in the panel to fuch venire facias, with their additions and places of abode, that the parties concerned in any fuch trials may have timely notice of the jurors who are to ferve at the next affizes, in order to make their challenges to them, if there be cause; and the persons named in such panels shall be summoned at the next affizes and no other. 3 G. 2. c. 25. f. 8. It is true, this gives them an opportunity of knowing how to make their challenges; but it also gives them an opportunity to another purpole, namely, of labouring the -a practice which cannot be too much difcouraged,

In Wales; the sheriff shall summon out of every hundred or commote, not less than ten, nor more than fifteen; unless the judges shall order otherwise, 3 G. 2.

c. 25. ∫. 9.

And in the counties palatine; The sheriff shall summon not less than 48, nor more than 72 (unless the judges order otherwise; and shall eight days before the courts be held, cause a list to be made of the perfons summoned, which shall be hung up in the sheriff's

Aurors.

riff's office, to be inspected by any person. 3 G. 2. c. 25.

Upon the grand jury; there may be, and usually are, more than 12: but if there be 12 affenting, the others diffent, it is not necessary for the rest to agree. 2 H. H.

But upon a trial by a petit jury; it can be by no more nor less than 12, and all affenting to the verdict. 2 H.

In the county of York; only one panel of 48 freeholders and copyholders, and no more, shall be returned to serve on the grand inquest at the affizes; and at the sessions, not above 40, either upon the grand inquest, or other

fervice there. 7 & 8 W. c. 32. f. 8.

8. Every fummons of jurors shall be made by the Time and manner of summons. Theriff, his officer, or lawful deputy, fix days before at the least (and in Wales eight days before, and in the counties Palatine 14 days before, 3 G. 2. 2. 25. f. 9, 10.) shewing to every person so summoned the warrant under the feal of the office wherein they are appointed to serve; and if such juror be absent from the place of his habitation, notice of the fummons shall be given by leaving a note in writing, under the hand of such officer, containing the contents thereof, at the dwelling house of such jurer, with some person there inhabiting in the same. 7 & 8 W. c. 32.

1. 5.

Penalty on the theriff or bailiff neglecting.

9. If the theriff, his deputy, or bailiff, neglect their duty herein, or excuse any person for favour or re-ward; he shall forfeit 201. to him who shall sue. 7 & 8 W. c. 32. f. 6. Or, he may be fined tol. or under, by the judge of affize. 3 G. 2. c. 25. f. 6.

And no bailiff, or other officer, shall summon any person, other than such whose name is specified in a mandate figned by the sheriff or under sheriff, and directed to fuch bailiff or other officer; on pain of rol, on a fummary conviction before the judge of affize. 3 G. 2.

c. 25. f. 6.

How often they shall be sum-

10. No persons shall be returned as jurors at the affizes; who have ferved within one year before in the moned and serve. county of Rutland, or two years before in any other county (not being a county of a city or town, and except the counties of York and of Middlefex); on pain that the theriff, on examination and proof in a furnmary way.

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shall be fined by the judge not exceeding 51. 3 G. 2.

And the sheriff shall enter in a book, the names of fuch persons as shall be summoned and shall serve at the affizes, with their additions and places of abode alphabetically, and the times of their fervices; and every person who hath served, shall (on application by him made to the theriff) have a certificate gratis, testifying his attendance: and the faid book shall be transmitted to the succeeding sheriff. 3 G. 2. c. 25.

In the county of York; They shall not be returned above once in four years, at the affizes or fessions. 7 &

8 W. c. 32. f. 7. 10 An. c. 14. f. 5.

And if the sheriff of the county of York, neglect to keep such book as above, or to enter the names, or to deliver over to his fuccessor the entries made for four years next before, or to deliver the certificate gratis; he shall forfeit rool. half to the king, and half to him that shall fue. 3 & 4 An. c. 18.

And if he shall summon or return any juror, who shall have served within four years, and shall not on producing the certificate discharge the summons or return, and thereof give notice to the party fummoned, fix days before the affizes or feffions; he shall forfeit 201. to the party, with full costs. 3 & 4 An.

c. 18. f. 4.

In the county of Middlefex: No person shall be returned to ferve as a juror, at any fessions of nisi prius, who hath been returned at the two terms or vacations next before: on pain of the sheriff being fined by the judge

51. or under. 4 G. 2. c. 7. f. 2.

And by the 7 & 8 W. c. 32. f. 9. The inhabitants of the city and liberty of Westminster, shall be exempted from ferving in any jury at the fessions for Middlefex, by reason of their attendance at the courts of Westminster hall.

IT. In any actions brought in the courts at West- Jury of view. minster, where it shall appear to the court, that it is necessary that the jurors should have the view of the place in question, they may order special writs of distringas or habeas corpora to iffue, by which the sheriff shall be commanded, to have fix out of the

pecial jury.

first 12 of the jurors, or some greater number of them, at the place in question, some convenient time before the trial; who shall have the matters in question shewn to them by two persons in the said writs named; and the sheriff by a special return upon the same, shall certify that the view hath been had according to the command of the said writ. 4 An. c. 16. s.

up the number of white and to the

12. Tr. 8 W. a rule was made, that when the master is to strike a jury, viz. 48 out of the freeholders book, he shall give notice to the attornies of both sides to be present; and if the one comes, and the other does not, he that appears shall according to the ancient course strike out 12, and the master shall strike out other 12 for him that is absent. I Salk. 405.

But if by rule of court, the master is ordered to strike a jury, in case it be not expressed in such rule, that the master shall strike 48, and each of the parties shall strike out 12; the master is to strike 24, and the parties have no liberty to strike out any. I Salk, 405.

M. 8 W.

And the party who shall apply for a special jury to be struck, shall pay the sees for the striking such jury, and shall not be allowed the same on taxation. 3 G. 2. c. 25. s. 16. And also shall pay all the expences occasioned by the trial of the cause, and shall have no other allowance for the same upon taxation of costs, than he would be intitled to, if the cause had been tried by a common jury; unless the judge shall in open court certify upon the back of the record, that the same was a cause proper to be tried by a special jury, 24 G. 2. c. 18. s. 1.

And no person who shall serve upon a special jury, shall be allowed more than the sum which the judge shall think reasonable, not exceeding one guinea, except in causes wherein a view is directed. 24 G. 2.

c. 18, f. 2. Like system as the branches of the line

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On a motion for a special jury, in the case of the King against Maccartney, T. 2 G. for the murder of the duke of Hamilton, it was held by Parker chief juflice, that there cannot be a special jury in cases of treason or felony; for the party must have the advantage of challenging 20 in case of felony, and 35 in case of high treason, without cause shewn. In cases of special juries, there are 48 brought before the master, and he takes 24; fo there cannot be a rule for a good jury, nor for a special jury, in this case of a trial at bar; for the jury will be the same with or without fuch a rule, for they are all good juries in Middlesex, and so in all cases of jurors at the bar; and if there should be a special jury, it would take away the advantage the party has of challenging peremptorily, although not of shewing cause. So no rule was made in this case, lest the sheriff in all other cases, when there is no fuch rule, should not return a good jury. Viner. Trial. (D. e. 2.) 5.

ments, informations, or other actions on penal statutes, at 5 P. & M. c. 7.) shall not appear, or shall be reduced below the number by challenge, the judges on request of the plaintiff (or defendant, 14 El. c. 9.) may command the sheriff to appoint so many other able persons of the county then present at the assizes, as shall make up a full jury; whose names shall be annexed to the panel. 35 H. 8. c. 6. s.

And by the 4 & 5 W. c. 24. f. 18, 19. these tales-men, (tales de circumstantibus) shall have each 5 l. a year, of like

estate as other jurors; in Wales 31.

But by the 7 & 8 W. c. 32. f. 3. Tales-men in nist prius shall be returned out of the other panels, returned to serve at the same affizes.

And the parties may have their challenges to the tales,

as to other jurors. 35 H. 8. c. 6. f. 7.

And if such tales-men, after they be called, be present, and do not appear, or after appearance do wilfully with-draw themselves, the judges may fine them; which shall be levied as issues forfeited by jurors, for default of their appearance at common law, have been accustomed to be levied. 35 H. 8. c. 6. s. 9.

By the 4 & 5 W. c. 24. f. 20. No fee shall be taken by any sheriff, clerk of affize, or any other person, for the return of any tales, or upon the account of any tales

returned; on pain of 101, half to the profecutor, and half to the king.

Addition to be returned.

Jurers not ap-

pearing.

14. No theriff thall return any juror, without the addition of his dwelling, or fome other addition by which he may be known; and no extract of iffues shall be delivered out, without such addition; on pain of five marks to the king, and five marks to the party grieved; to be recovered in fessions, or elsewhere. 27 El. c. 7.

15. By the common law, jurors returned, and not appearing, shall lose and forfeit the issues returned upon

them. 35 H. 8. c. 6.

And if a juryman be called, and (being present) refuse to appear; or, having appeared, withdraw himfelf before he be fworn, the court may fet a fine upon him at their differetion. 2 H. H. 309. 35 H. 8.

c. 6. f. go he of therein on the show of

And by the 20 G. 2. c. 19. a juror not appearing and ferving in any court of record within the city of London, or in any other city or town corporate, liberty, or franchise, after being openly called three times, and oath made of his having been fummoned, shall (without reasonable excuse on oath or assidavit to the fatisfaction of the court) be fined not more than 40s. nor less than 20s. and on refusal to pay to fuch person whom the judge or judges shall appoint to receive the same, they shall levy the same by warrant of diffress, rendring the overplus, the reasonable charges of diffress and sale being first deducted; the fame to be paid to the proper officer of the place, to be applied to fuch uses as iffues set on jurors or other fines fet in such courts are by charter, ulage, or prefcription applicable.

16. If the clerk of affize, or other officer, shall record the appearance of any person, who did not appear; he shall, on conviction before the judge of affize in a furmary way, forfeit not exceeding 101, nor under

408. 3 G. 2. c. 25. f. 3.

cording persons who did not ap

Drawing jurors

Penalty of re-

17. Last of all; The name of each person sumnames for trial. moned to try the issues of nist prins, with his addition and place of ahode, shall be written in feveral and distinct pieces of parchment or paper, as near as may be of equal fize, and delivered to the marshal by the under sheriff. And the same shall by the marshal be rolled up, all, as near as may be, in the same man-

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ner, and put together in a box or or glass to be provided for that purpose. And when any cause shall be brought on to be tried, some indifferent person, by direction of the court, shall in open court draw out 12 of the faid parchments or papers one after another. And if any of the persons, whose names thall be fo drawn, shall not appear, or be challenged and fet afide; then fuch further number, until 12 be drawn who shall appear, and after all causes of challenge, shall be allowed as fair and indifferent. And the faid 12 persons so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being fworn, shall be the jury to try the cause. And the names of the persons so drawn and fworn, shall be kept apart by themselves in some other box or glass to be kept for that purpose, till fuch jury shall have given in their verdict, and the fame is recorded, or until fuch jury shall by confent of the parties, or leave of the court, be discharged. And then the same names shall be rolled up again, and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn. And so toties quoties, as long as any cause remains then to be tried. Provided, that if any cause shall be brought on to be tried, before the jury in any other cause shall have brought in their verdict, or be discharged; the court may order 12 of the residue of the faid parchments or papers, to be drawn as aforefaid. 3 G. 2. c. 25. f. 11, 12.

IV. Of the challenge of jurors.

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- i. Of the several kinds of challenge.
- ii. When the challenge is to be taken.
- iii. How the challenge shall be tried.
- iv. How panels may be reformed by the court, with-

i. Of the several kinds of challenge.

Two kinds of challenge.

There are two kinds of challenge; either to the array, by which is meant the whole jury as it stands arrayed in the panel, or little square pane of parchment on which the jurors names are written: or to the pells, by which are meant the several particular persons or heads in the array. Infl. 156, 158.

To the array :

1. Challenge to the array, is in respect of the partiality or default of the sheriff, coroner, or other officer that made the return: and this is two-fold;

Principal challenge to the array. (1) Principal challenge to the array: which if it is made good, is a fufficient cause of exception, without leaving any thing to the judgment of the triers.

Causes of challenge of this fort, are such as these: If the sheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue. If any one or more of the jury be returned at the denomination of the party plaintiff or defendant, the whole array shall be quashed: If the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party, this is a good cause of challenge. So if the plaintiff or defendant have an action of debt against the sheriff; but otherwise it is, if the sheriff have an action of debt against either party. Or if the sheriff have parcel of the land depending upon the same title. Or if the sheriff, or his bailiff which returned the jury, be under the diffress of either party. Or if the sheriff, or his bailiff, be either of counsel, attorney, officer, or servant of either party; goffip; or arbitrator in the fame matter, and treated I Inft. 156. thereof.

And formerly, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been quashed: but now, by the 24 G. 2. c. 18. f. 4. No challenge shall be taken to any panel of jurors, for want of a knight's being returned of the panel, where a peer is

party.

And the subject may challenge the array against the king; as in traverse of an office, he that traverseth may challenge the array: And so it is in case of life. I Inst. 156.

And where a subject may challenge the array, for unindifferency, there the king being a party may also challenge for the same cause. I Inst. 156.

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The array challenged on both fides shall be quashed.

I Inft. 156. (2) Challenge to the array, for favour. He that taketh Challenge to the this must shew in certain the name of him that made it, array for favour. and in whose time, and all in certainty. This kind of

challenge, being no principal challenge, must be left to the discretion and conscience of the triers. As if the plaintiff or defendant be tenant to the sheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the fon of the sheriff, and the daughter of the party, or the like, is no principal challenge, but to the favour; but if the sheriff marry the daughter of either party, or the like, this (as hath been faid) is a principal challenge. 1 Inft. 156.

But where the king is party, one shall not challenge the array for favour; because in respect of his allegiance, he ought to favour the king more: but if the theriff be a menial fervant of the king, there the challenge is good, I Inft. 156. By which seems to be meant, that such challenge is not good, without shewing some actual partiality

in the sheriff. 2 Haw. 419.

But the king may challenge the array for favour. I Inft. 156.

2. Challenge to the polls is threefold: To the polls: (1) Peremptory. This is so called, because a person Peremptory

may challenge peremptorily, upon his own diflike, with-challenge to the

out shewing of any cause.

This peremptory challenge shall not be allowed to the king; for it is provided by the 33 Ed. 1. A. 4. that he who challenges a juror for the king, shall shew cause, and the truth thereof shall be inquired of. And this extends as well to criminal, as civil causes. However, if the king challenge a juror, he need not shew any cause of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the person challenged. And if the defendant, in order to oblige the king to shew cause, presently challenge all the rest, yet it hath been adjudged, that the defendant shall be first put to shew all his causes of challenge, before the king need to shew any. 2 Haw. 413.

And this peremptory challenge is not allowable to the party against the king, but only in case of treason or fe-

lony, in favour of life. I Inst. 156.

But

Principal challenge to the polls. But in case of treason or selony, the prisoner by the common law might peremptorily challenge 35, which was under the number of three juries; but by the statute of the 22 H. 8. c. 14. s. 6. the number is reduced to 20, in petit treason, murder, and selony; and in case of high treason, and misprisson of high treason, it was taken away by the statute of the 33 H. 8. c. 23. but by the statute of the 1 & 2 P. & M. c. 10. the common law was again revived for any treason, and therein the prisoner shall have his peremptory challenge to the number of 35. Inst. 156.

But as to all murders and other felonies, the statute of the 22 H. 8. c. 14. taking away the peremptory challenge of above 20 stands in force. 2 H. H. 269. But if the party challenge above that number, he shall not have judgment of death, but his challenge shall be overruled, and he shall be put upon his trial. H. Pl. 259.

2 H. H. 270.

Note; The above statute of the 1 & 2 P. & M. c. 10. by mistake hath been omitted out of Mr. Hawkins's

edition of the statutes.

(2) Principal challenge to the polls: where cause is shewn, but which if found true, stands sufficient of itself, without leaving any thing to the triers.

Causes of principal challenge to the yolls, are such as

thefe :

A peer is not to be fworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his discharge. 1 Inft. 156. 2 Haw. 415.

Want of freehold, is a good cause of challenge. I Infl.

156.

Also, if a person is an alien. 1 Inst. 156.

If the juror be within the age of 21, it is a good cause

of challenge, I Inft. 157.

If a juror is above the age of 70, or is fick, or is non-refident in the county, he may fue out a writ of privilege for his discharge; but if he be returned and appear, he can neither be challenged by the party, nor excuse himfels from not serving, if there be not enow without him. 2 Haw. 418.

If the jurer be of blood or kindred to either party, this is a principal challenge; for that the law prefumeth that one kinfman doth favour another, before a stranger; and how far remote soever he is of kindred, yet the challenge

is good. 1 Inft. 157.

Affinity,

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Affinity, or alliance by marriage, is a principal challenge, if the same continues, or issue be had; otherwise, it is but to the favour. I Inft. 157.

If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a

good challenge in our books. I Inft. 157.

If the juror have part of the land that dependeth upon the same title, it is a principal challenge. I Inft.

It hath been allowed a good cause of challenge, on the part of the prisoner, that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. 2 Haw. 418.

Likewise if the juror gave a verdict before, for the same cause, or upon the same title or matter, though between

I Inft. 157. other persons.

So likewise one may be challenged, that he was indictor of the plaintiff or defendant in the same cause; for fuch a one, it may be thought, will not falfify his former oath. Lamb. 554. And if a grand juryman who was one of the indictors in the same cause, be returned upon the petit jury, and do not challenge himself, he shall be fined. 2 H. H. 309.

If a juror hath been an arbitrator, chosen by the plaintiff or defendant in the same cause; and hath been informed thereof, or treated of the matter, this is a principal challenge; otherwise, if he were chosen indif-

ferently by either of the parties. I Inft. 157.

If he be of counsel, servant or of fee, of either party,

it is a principal challenge. I Inft. 157.

Also, if a juryman, before he be sworn, take information of the case, this is cause of challenge. 2 H. H. 306.

If any, after he be returned, do eat and drink at the charge of either party, it is a principal cause of chal-

lenge. 1 Inft. 157.

But it is not a principal challenge to a juror, but only to the favour, that the profecutor was lately entertained

at his house. 3 Salk. 81.

Actions brought either by the juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal challenge; other actions, which do not imply malice or difpleasure, are but to the favour. 1 Inft. 157.

In a cause where the parson of a parish is party, and the right of the church cometh in debate, a parishioner

is a principal challenge. I Inft. 157.

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge; but if either party labour the juror to appear, and to do his conscience, this is no challenge at all, but lawful for him to do it. I Inft. 157.

That the juror is a fellow fervant with either party, is no principal challenge, but to the favour. I Inst.

If the juror be attainted or convicted of treason or felony, or for any offence to life or member, or in attaint for a false verdict, or for perjury as a witness, or in a conspiracy at the suit of the king, or in any suit (either for the king or for any subject) be adjudged to the pillory, tumbrel, or the like, or to be branded or stigmatized, or to have any other corporal punishment, whereby he becometh infamous; these, and the like, are principal causes of challenge. 1 Inft. 158.

So it is, if a man be outlawed in trespass, debt, or any other action, for he is exlex, and therefore not a lawful

I Inft. 158.

And old books have faid, that if he be excommuni-

cated, he could not be of a jury. I Inft. 158.

Challenge to the

3. Challenge to the polls for favour. This is, when solls for favour. either party cannot take any principal challenge, but fheweth causes of favour, which must be left to the conscience and discretion of the triers, upon hearing their evidence, to find him favourable, or not favourable. And the causes of favour are infinite. For all which, the rule of law is, that he must stand indifferent, as he stands unsworn. I Inft. 157.

ii. When the challenge is to be taken.

1. No challenge can be taken either to the array, or to the polls, till a full jury have appeared. 2 Haw.

2. He that hath divers challenges, must take them all

at once. I Inft. 158.

3. If a juror be challenged by one party, and after, be tried indifferent, it is time enough for the other party to challenge him. 1 Inft. 158.

Jurozs.

4. After challenge to the array, and trial duly returned, if the same party take a challenge to the polls, he must shew cause presently. 1 Inst. 158.

5. If a juror be formerly fworn, if he be challenged, the party must shew cause presently, and that cause must

rise since he was sworn. I Inst. 158.

6. When the king is party, the defendant that challengeth for cause must shew his cause presently. I Inst.

158.

7. But if a juror be challenged between party and party, and there be enough of the panel besides; the cause of challenge needeth not to be shewed, unless the other side challenges touts peravail. Tr. p. pais 143.

8. If a man, in case of treason or felony, challenge for cause, and he be tried indifferent, yet he may challenge

him peremptorily. 1 Inft. 158.

9. The prisoner must take all peremptory challenges himself, even in cases wherein he may have counsel. 2

Haw. 413.

10. The challenge to the array, must be in writing (C); but where the challenge is to the polls, it is a short way by a verbal challenge. Tr. p. pais 172.

iii. How the challenges shall be tried.

1. The challenge of him who first challenged shall be

first tried. Tr. p. pais 144.

2. If the array be challenged, it lies in the discretion of the court how it shall be tried; sometimes it is done by two coroners, and sometimes by two of the jury, with this difference, that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge sound in favour of partiality, then by any other two assigned thereunto by the court,

2 H. H. 275.

3. When any challenge is made to the polls, if it be before any jurors are fworn, the court shall chuse the triers; if two are sworn, they shall try; and if they try one indifferent, and he be sworn, then he and the two triers shall try another; and if another be tried indifferent; and he be sworn, then the two triers cease, and the two that be sworn on the jury shall try the rest: If the plaintiff challenge ten, and the defendant one, and the twelfth is sworn, because one cannot try alone, there shall be added to him one challenged by the plaintiff,

tiff, and another by the defendant. Fineh 112. I Infl. 158.

4. The triers oath is, "You shall well and truly try, " whether A. B. (the juryman challenged) stand indif-" ferent between the parties to this issue: so help you " god." 1 Salk. 152.

5. If the cause of challenge touch the dishonour or discredit of the juror, he shall not be examined on his oath; but in other cases, he shall be examined on his oath, to inform the triers. I left. 158. I Salk.

153 6. If the array be quashed against the sheriff, the process of venire facias juratores shall be directed to the coroners; if against any of the coroners, then process shall be awarded to the rest; if against all of them, then the court shall appoint certain elifors (so named ab eligendo), against whose return no challenge shall be taken to the array, because they were appointed by the court; but he may have his challenge to the polls. I Infl. 158.

iv. How panels may be reformed by the court without challenge.

Befides the challenges which may be taken by the plaintiff or defendant, it is enacted by the 3 H. 8. c. 12. that in cases where the king is party, the justices of affize, or of the peace in fessions, may reform the panels of jurors, by putting to and taking out of the names of the persons impanelled by their discretion; and if the theriff do not return the panel fo reformed, he shall forfeit 201. half to the king, and half to him that shall fue.

And this extends both to grand and petit juries. 2 H. H. 156.

And hence it is, that if a prisoner be arraigned before the judge that fits upon the crown fide, it is usual for the judge to fend for a jury to the judge of nife prius, and when the jury is brought, the sheriff returns them between the king and the prisoner; which is by virtue of this statute. 2 H. H. 265.

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V. Of the demeanor of jurors in giving their verdict.

1. By the law of England, a jury after their evidence Jurors to be kept given upon the iffue, ought to be kept together in fome without meat or convenient place, without meat or drink, fire or candle, and without speech with any, unless it be the bailiff, and with him only if they be agreed. I Inft. 227.

2. And the bailiff ought to be fworn to keep them to- Bailiff fworn to gether, and not to fuffer any to speak with them. 2 H. H. keep them.

296.

3. And if the jury after their evidence given to them Whether eating 3. And if the jury after their own charges eat or drink, either be- and drinking at the bar, do at their own charges eat or drink, either be- final avoid the fore or after they be agreed on their verdict; it is fineable, verdict, but it shall not avoid the verdict; but if before they be agreed on their verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it shall avoid the verdict; but if it be given for the defendant it shall not avoid it, and so on the contrary. But if after they be agreed on their verdict, they eat or drink at the charge of him for whom they do pass, it shall not avoid the verdict. I Inft. 227.

4. But with the affent of the justices they may both In what cases eat and drink; as if any of the jurors fall fick before they may eat or they be agreed of their verdict, then by the affent of the drink. justices he may have meat or drink, and also such other things as be necessary for him and his fellows also, at their own costs, or at the indifferent costs of the parties, if they so agree: and if they cannot agree, the juflices may in such case suffer the jury to have both meat and drink for a time, to fee whether they will agree. Dr. & St. 158.

5. After there departure they may defire to hear one of May re-examine the witnesses again, and it shall be granted, so he deliver witnesses. his testimony in open court; and also they may defire to propound questions to the court for their satisfaction, and it shall be granted, so it be in open court. 2 H. H.

6. But if the plaintiff after evidence given, and the jury May hear no evideparted from the bar, or any for him, do deliver any let-dences but in ter from the plaintiff to any of the jury concerning the courts matter in iffue, or any evidence, or any writing touching the matter in iffue, which was not given in evidence, it shall avoid the verdict, if it be found for the plain-

tiff, but not if it be found for the defendant, and fo on the contrary. But if the jury carry away any writing unfealed, which was given in evidence in open court, this shall not avoid their verdict, albeit they should not have carried it with them. I Infl. 227.

Cannot be difcharged without giving a verdict.

7. A jury fworn and charged in a capital case, cannot be discharged (without the prisoner's consent) till they have given a verdict. 2 Hawk. 439. Fost. 22. Sir John Wedderbourn's case.

And the king cannot be nonfuit, for he is in judgment

of law ever present in court. 1 Inft. 227.

May be fined for faying they are agreed, when they are not.

8. If a jury fay they are agreed, and it being asked who shall say for them, they say their foreman, but upon farther inquiry they are not agreed, they may be fined.

2 H. H. 200.

Catting lots for their verdict.

9. If a jury cast lots for their verdict, it shall be set aside, and they shall be fined for the contempt. 3 Keb.

805. 2 Lev. 140, 205. 2 Jones 83.

M. 12 G. Hale and Cove. The jury having fat up all night agreed in the morning to put two papers into a hat, marked Plaintiff and Defendant, and so draw lots; Plaintiff came out, and they found for the plaintiff, which happened to be according to the evidence, and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict must be set aside; but the question was, whether the desendant should pay costs: the court inclined to give the plaintiff costs, comparing it to the case of a verdict against evidence; but at last it was agreed, that the costs should wait the event of the new trial. Str. 642.

Giving werdick without evidence.

10. The jury may give a verdict without testimony, when they themselves have conusance of the fact. Tr. p. pais 279. I Ventr. 97.

Juror may be a witness.

11. But if they give a verdict on their own know-ledge, they ought to tell the court so; but they may be sworn as witnesses; and the fair way is to tell the court before they are sworn that they have evidence to give. 1 Salk. 405.

For certainly it is of dangerous consequence, to receive a verdict against evidence given, on supposal that some of the jury knew otherwise, or on private information given by any juryman to the rest, where he cannot be cross exa-

mined. Tr. p. pais 209.

Private verdict.

12. After they be agreed, they may in causes between party and party, if the court be risen, give a private verdict.

Aurors.

dict, before any of the judges of the court; and then they may eat and drink; and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court shall stand. I Inst. 227.

But in criminal cases of life or member, the jury can give no private verdict, but they must give it openly in

court. 1 Inft. 227.

13. In all causes, and in all actions, the jury may special verdict. give either a general or a special verdict, as well in causes criminal as civil; and the court ought to receive a special verdict, if pertinent to the point in issue. 3 Salk.

Thus if one be indicted for grand larceny, that is, for stealing goods above the value of 12d. yet the jury may find specially, that he is guilty, but that the goods are not above the value of 12d. In which case, he shall only have judgment of petty larceny. 1 Haw. 95.

14. Jurors are to try the fact, and the judges ought Jurors to try not to judge according to the law that ariseth upon the fact. fact,

I Inft. 226.

But if they will take upon them the knowledge of the law upon the matter, they may; yet it is dangerous, for if they mistake the law, they run into the danger of an attaint: therefore to find the special matter is the fafest way, where the case is doubtful. I Inft.

But if the jury find according to the direction of the judge in matter of law, although the judge be mistaken, yet the jury shall not be liable to attaint. L. Raym.

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15. It hath been adjudged, that if the jury acquit Finding against a prisoner of an indictment of felony against manifest evidence. evidence, the court may, before the verdict is recorded, but not after, order them to go out again, and re-consider the matter; but this by many is thought hard, and feems not of late years to have been fo frequently practifed as formerly. However it is fettled, that the court cannot fet afide a verdict which acquits a defendant, of a profecution properly criminal, as it feems that they may a verdict that convicts him, for having been given contrary to evidence and the directions of the judge, or any verdict whatfoever for a miftrial. 2 Hawk. 442.

Varying from the verdict.

16. After the verdict recorded, the jury cannot vary from it; but before it be recorded, they may vary from the first offer of their verdict, and that verdict which is recorded shall stand. I Inft. 227.

Verdict finding an impossibility.

17. A verdict finding an impossible matter shall not be void, if at the same time it find the substance of the indictment; but the furplus shall be rejected. Hawk. 77.

Verdict how far to be taken firictly.

18. Verdict shall not be taken so strictly as pleadings; but the substance of the thing in issue ought to be always found. 3 Salk. 373.

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Where they cannot agree.

19. It is faid, that if the jurors agree not, before the departure of the justices of gaol delivery into another county, the sheriff must send them along in carts, and the judge may take and record their verdict in a foreign county. 2 H. H. 297. Tr. p. pais 274, 285. I

Vent. 97.

But if the case so happen, that the jury can in no wife agree, as if one of the jurors knoweth in his own conscience the thing to be false, which the other jurors affirm to be true, and so he will not agree with them in giving a false verdict, and this appeareth to the justices by examination; the justices (as it seemeth) in fuch case may take such order in the matter, as shall feem to them by their discretion to stand with reason and conscience, by awarding a new inquest, or other-wise, as they shall think best by their discretion, like as they may do, if one of the jury die before the verdict. Dr. & Stud. 158.

VI. Of the indemnity and punishment of jurors.

Threatning a juror.

1. If a man affault or threaten a juror, for giving a verdict against him, he is highly punishable by fine and imprisonment; and if he strike him in the court, in the presence of the judge of affize, he shall lose his hand, and his goods, and profits of his lands during life, and suffer perpetual imprisonment. 1 Hawk. 57, 58.

Juror not appearing.

2. Where more than one of the persons returned on a jury do appear, but not a sufficient number to take an inquest, and some of the others come within view of the court, or into the same town in which the court is holden, but refuse to come into the court to be sworn;

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upon proof of fuch matter, the court may, at the prayer of the party, order the jurors who appeared, to inquire what is the yearly value of fuch defaulters lands, and after fuch inquiry made, either fummon them to appear. on pain of forfeiting such sum as their lands have been found to be worth by the year, or some lesser sum, or impose a fine of the like sum upon them, without any farther proceeding. But it feems, that fuch juror shall be liable to lose his iffues only for such default, and not the yearly value of his lands, unless the party pray it: But a juror who hath actually appeared, and after makes default, is faid to be subject to such forfeiture of the yearly value of his lands, whether the party pray it or not; because his contempt appears to the court by its own record: yet even in this case, the court in discretion will sometimes only impose a small fine. Also it feems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to lose his issues, or to be amerced, but not to be fined. 2 Hawk. 146.

And by the 3 G. 2. c. 25. f. 13. In causes of nisi prius, every person whose name shall be drawn, and who shall not appear, after being openly called three times, shall on oath made of his having been lawfully fummoned, forfeit not exceeding 51. nor less than 40s, unless some reasonable cause be proved, by oath or affidavit, to the satisfac-

tion of the judge.

3. If the grand jury at the affizes or fessions will Whether a grand not find a bill, the court may, impanel another inquest jury may be fined (by the 3 H. 7. c. 1.) to inquire of their concealments, bill. and thereupon fet fines upon them; but it feemeth that fines fet upon grand inquests in any other manner, are not warrantable by law; for the privilege of an Englishman is, that his life shall not be drawn in danger without due presentment or indictment, and this would be but a flender screen or safeguard, if every justice of the peace, or judge of affize, may make the grand jury present what he pleases, or otherwise fine them. 2 H. H. 160, 1.

4. If any juror do take of either party to give his Juror taking a verdict, he shall on conviction by bill or plaint, before bribe. the court where the verdict shall pass, forfeit ten times as much as he hath taken, half to the king and half to him that shall sue. 5 Ed. 3. c. 10. 34 Ed. 3. c. 8.

38 Ed. 3. ft. 1. c. 12.

m a criminal

Whether a furer 5. It feems to be certain, that no one is liable to any may be profecution whatfoever, in respect of any verdict given by ted for a verdict in a criminal matter, either upon a grand or petit jury; for fince the fafety of the innocent, and punishment of the guilty doth so much depend upon the fair and upright proceedings of jurors, it is of the utmost consequence, that they should be as little as possible under the influence of any passion whatsoever. And therefore, left they should be biassed with the fear of being harraffed by a vexatious fuit, for acting according to their consciences, the law will not leave any possibility for a profecution of this kind. And as to the objection, that an attaint lies against a jury for a false verdict in a civil cadle, and that there is as much reason to allow of it in a criminal one; it may be answered, that in an attaint in a civil cause, a man's property is only brought into question a second time, and not his liberty or life. Haw. 191. L. Raym. 469.

Attaint in a rivil cause.

6. But where the jurors give a false verdict upon an iffue joined in any court of record, and judgment thereupon, the party grieved may bring his writ of attaint in the king's bench or common pleas, upon which 24 of the best men of the county are to be jurors, who are to hear the same evidence which was given to the petty jury, and as much as can be brought in affirmance of the verdiet, but no other against it. And if these 24 who are called the grand jury, find it a false verdict, then followeth this terrible judgment at the common law upon the petit jury; that the party shall be infamous, so as never to be received to be a witness, or a juror; shall forfeit his goods and chattels; and his lands and tenements shall be taken into the king's hands; his wife and children cast out of doors; his houses prostrated; his trees rooted up; his meadows ploughed up; and his body imprisoned. And feeing all trials of real, perfonal, and mixt actions depend upon the oath of 12 men, prudent antiquity inflicted a strange and severe punishment upon them, if they were attainted of perjury. 1 Inft. 294. Read. Jur.

But now by the statute of 23 H. 8. c. 3. The severity of this punishment is moderated, if the writ of attaint be grounded upon that statute; but nevertheless, the party grieved may at his election, either bring his writ of attaint upon that statute, or at the common law.

Tr. p. pais 222.

But this proceeding feems to be intirely difused at this day; and in the place of attaint, motions are now usually made for new trials, when a verdict is against evidence.

Wood b. 4. c. 4. Read. Jur.

But there can be no new trial for or against the king.

Tr. p. pais 210.

7. It feems to be the current opinion of the old books, Whether they that jurors are not subject to any prosecution for a false may be fined for verdict except by way of attaint: And there feem to be very few antient precedents for the punishment either of a grand or petit jury, merely for giving a verdict against evidence, or the direction of the court, either in a capital or civil matter. 2 Haw. 147.

And the fining and imprisoning of jurors for giving their verdict, hath several times been declared in parliament an illegal and arbitrary innovation, and of dangerous confequence to the government, and the lives and liberties of

the subject. 2 Keb. 180. Read. Jur.

And in Bushel's case, it was resolved by all the judges, upon a full conference together, that a jury is not finable for going against their evidence, where an attaint lies. And where an attaint doth not lie, L. Vaughan fays thus; "That the court could not fine a juryman at the comer mon law, where attaint did not lie, I think to be the clearest position that ever I considered, either for au-" thority or reason of law." And one reason for this is, because the judge cannot fully know upon what evidence the jury give their verdict; for they may have other evidence, than what is shewed in court; they are of the vicinage, the judge is a stranger; they may have evidence from their own personal knowledge that the witnesses speak false, which the judge knows not of; they may know the witnesses to be stigmatized and infamous, which may be unknown to the parties or court. And if the jury knew no more than what they heard in court, and fo the judge knew as much as they, yet they might make different conclusions, as oftentimes two judges do; and therefore as it would be a strange and absurd thing, to punish one judge for differing with another in opinion or judgment, so it would be worse for the jury, who are judges of the fact, to be punished for finding against the direction of him who is not judge of the fact. Tr. p. pais 225. L. Vaugh. 135.

And to fay the truth, fays Lord Hale, it would be the most unhappy case that could be to the judge, if he at his

peril must take upon him the guilt or innocence of the prisoner: and if the judge's opinion must rule the matter of fact, the trial by jury would be useless. 2 H. H.

But what if a jury gave a verdict against all reason, convicting or acquitting a person indicted of selony, what shall be done? If the jury convict a man, against or without evidence, and against the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury acquit him in like manner, the court may send them back again (and so in the former case) to consider better of it, before they record the verdict; but if they are peremptory in it, and stand to their verdict, the court must take their verdict and record it. 2 H. H. 309, 310.

A. Warrant for the returning lifts of jurors.

Westmorland. To Henry Holme, gentleman, high constable of the West Ward, within the county aforesaid.

AT the general quarter sessions of the peace of our sovereign lord the king, holden at —— in and for the said county, the —— day of July, in the —— year of the reign of our said sovereign lord George the third, of Great Britain, France, and Ireland, king, defender of the saith, and so forth, before us —— esquires, and others our associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed:

These are to require you, upon sight hereof, to issue forth your precepts to all the petty constables within your said ward, thereby directing and requiring them, to make and return true lists of jurors, according to the form or to the effect here solven

lowing; that is to fay,

Westmorland, To the constable of

BY virtue of a warrant from his majesty's justices of the peace in and for the said county, at their general quarter sessions assembled, unto me directed, you are hereby required to make a true list in writing, containing the names and places

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of abode, together with the titles and additions, of all persons, between the ages of 21 and 70, dwelling within your constablewick, qualified to serve upon juries; that is to say, of every fuch person who hath in his own name, or in trust for him, within the county aforesaid, 101. a year above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of antient demesses, or in rents, or in all or any of them, in see simple, see tail, or for the life of himself, or some other person; or having land in possession in his own right of 201. a year above the reserved rent, being held by leafe for 500 years or more, or for 99 years, or any other term determinable on one or more lives: in order to the making of which list, you may, if you think it needful, apply to any parish officer, who shall have in his custody any of the rates for the poor or land tax, and from thence take the names of such persons so qualified. Which list so being made as aforesaid, you are required, upon two or more fundays, at least 20 days before Michaelmas next, to fix on the door of the church or chappel, and of every other publick place of religious worship within your parish or other precinct; and leave at the same time a duplicate thereof with a churchwarden or overfeer of the poor, to be perused by the parishioners gratis. And the faid list you are also further required to deliver in at the newt general quarter sessions of the peace, to be holden in and for the faid county, in open court; or otherwise, you may in the mean time apply to one of his majesty's justices of the peace in and for the faid county, and in his presence subscribe the faid lift, and attest the truth thereof upon oath; and the same (being first also signed by the said justice) you may deliver to me, to be by me delivered in at the faid next general quarter sessions. Given under my band at Barnskew in the faid county, the - day of - in the year -

Henry Holme, High Conflable.

And this you the faid high constable are in no wife to omit, upon the peril that shall ensue thereof. Given under our hands and seals the day and year first above written.

imple, the latter of Thomas and of Rudand, 11st, faither at the appropriate joing Magazie, admit this be to conse to

B. The form of a writ to the sheriff to summon jurors, for the trial of an issue joined.

Note; The general precept for summoning jurors to the sessions, is contained in the precept for summoning the sessions, in the title sessions.

C. Challenge to the array, because the sheriff is of kindred to one of the parties; from Coke's entries.

A ND now at this day, to wit - came the aforefaid A. the plaintiff, and B. the defendant, by their attornies, and the jurors were impanelled, and demanded, and came, and thereupon the aforesaid B. challengeth the array of the panel aforesaid, because he said that that panel was arrayed by one John Zouch, knight, now and at the time of making the array aforesaid, sheriff of the said county of Derby, which faid sheriff is a kinsman of the aforesaid John Maners (the plaintiff); to wit, the son of George Zouch, esquire, the son of John Zouch, knight, the son of John Zouch esquire, the son of William Lord Zouch, the son of Alan Lord Zouch, the son of William Lord Zouch, the fon of Elizabeth daughter of William Lord Roos, the father of William Lord Roos, the father of Thomas Lord Roos, the father of Eleanor mother of George Maners, knight, the father of Thomas Earl of Rutland, the father of the aforesaid John Maners. And this he is ready to verify, whereupon he prayeth judgment, and that the said panel may be quashed. Which said challenge by

Jurors.

and by triers, to this chosen and sworn, is found true. And therefore let the panel aforesaid be quashed and amoved, &c. Tr. per p. 160.

Challenge because the panel was returned at the instance of the party.

And upon this, the said — challenges the array of the said panel, because he says, that that panel was arrayed by one J. S. esquire late sheriff of the county of aforesaid, at the nomination of the said — and in his favour; which said challenge, by triers thereof sworn, is found true.

For other forms of challenges, and proceedings thereupon, see Tr. per pais 159-184.

Justifiable homicide. See Domicive.

Here endeth the SECOND VOLUME.

and by the standard by the word of the left to the stand of the standard to th control Sor Tales p. 150. Challenge because the papel was cerusool at the inflance of the party. And upon this, the feit - Juliages the cores is 28 28 Annual Ann For other forms of challenges, and proceedings therethough the ster her bays 1233-195. Judidable homicide. See Konnicion. to the second of Same and the same of the same the second secon Here apactioning Second Voters Var a significant was

